380 N.C.—No. 4 Pages 688-828

ADVANCE SHEETS

OF

CASES

ARGUED AND DETERMINED IN THE

SUPREME COURT

OF

NORTH CAROLINA

JUNE 3, 2022

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SUPREME COURT OF NORTH CAROLINA

CASES REPORTED

FILED 18 MARCH 2022

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CHILD ABUSE, DEPENDENCY, AND NEGLECT

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Grounds for termination—neglect—likelihood of future neglect—failure to address domestic violence in home—The trial court properly terminated a mother's parental rights in her daughter on the ground of neglect based on a determination that a likelihood of future neglect existed if the child were returned to the mother's care. The court's findings showed that the mother had denied at least two reported incidents of domestic violence by the child's father; that the child's initial neglect adjudication resulted from the mother's tendency to deny or minimize the domestic violence issues at home; and that the mother made minimal progress in addressing the domestic violence component of her case plan, continued her relationship with the father until just months before the termination hearing, made few efforts to contact or develop a relationship with the child, and lacked appropriate housing. **In re T.B., 807.**

Grounds for termination—neglect—likelihood of future neglect—parent's cognitive limitations—The trial court did not err by determining that a mother's parental rights in her children were subject to termination on the grounds of neglect where the unchallenged findings of fact showed no changes in circumstance that would support a conclusion that the mother was unlikely to neglect her children in

the future. Rather, the mother's significant cognitive limitations prevented her from taking basic care of even herself, and she lacked the ability to comprehend the past neglect or how to care for her children going forward; furthermore, the suitability of other family members as caregivers was irrelevant where the mother was unfit to care for the children. **In re V.S., 819.**

Grounds for termination—neglect—likelihood of repetition of neglect—parental fitness at time of proceeding—In a private termination of parental rights matter, where petitioners had obtained custody of the child pursuant to a civil custody order, the trial court properly terminated the father's parental rights in the child on grounds of neglect (N.C.G.S. § 7B-1111(a)(1)). Although the father could not regain custody under the civil order without a substantial change in his parenting skills and ability to care for the child, the court did not err in determining that a substantial likelihood of repetition of neglect existed where, under the applicable statutes, that determination depends not on the parent's fitness to regain custody of the child but rather on the parent's fitness to care for the child at the time of the termination proceeding. **In re D.I.L., 723.**

Grounds for termination—neglect—past neglect—other parent's conduct—The trial court did not err by determining that a father's parental rights in his son were subject to termination on the grounds of neglect where the showing of past neglect was based on the mother's (rather than the father's) conduct. **In re C.S., 709.**

Grounds for termination—neglect—stipulations to factual circumstances—sufficiency of findings—The trial court properly terminated a father's parental rights to his daughter based on neglect after making findings that, although respondent was not responsible for the child's initial removal from the home (which was based on her testing positive for controlled substances at birth), he had a long-standing drug addiction, he continued to use drugs after he came forward as the child's father, and he lied to the court about his drug use. Although the court's findings were limited due to respondent having stipulated to the factual circumstances underlying the grounds for termination, the findings were supported by competent evidence and were in turn sufficient to support the court's conclusions of law. **In re M.S.L., 778.**

Jurisdiction—sufficiency of findings—In a termination of parental rights matter, the trial court's general finding that it had jurisdiction over the parties and the subject matter of the action was supported by the record and met the jurisdictional requirements of N.C.G.S. § 7B-1101. **In re M.S.L., 778.**

No-merit brief—multiple grounds for termination—The termination of a father's parental rights in his daughter on multiple grounds was affirmed where his counsel filed a no-merit brief and where the termination order was supported by the evidence and based on proper legal grounds. **In re T.B., 807.**

Standard of proof—clear, cogent, and convincing—not stated in open court or in written order—appropriate remedy—In a termination of parental rights proceeding, the trial court's failure to state that it was utilizing the standard of proof of clear, cogent, and convincing evidence, either orally in open court or in its written order terminating both parents' rights to their children—and in fact stating the wrong standard of proof in its order (preponderance of the evidence)—was in violation of N.C.G.S. § 7B-1109(f). Where the record evidence was not so clearly insufficient as to make further review futile, the termination order was reversed and the matter remanded for reconsideration under the correct standard of review. **In re J.C., 738.**

SCHEDULE FOR HEARING APPEALS DURING 2022

NORTH CAROLINA SUPREME COURT

Appeals will be called for hearing on the following dates, which are subject to change.

January 5, 6
February 14, 15, 16, 17
March 21, 22, 23, 24
May 9, 10, 11, 23, 24, 25, 26
August 29, 30, 31
September 1, 19, 20, 21, 22
October 3, 4, 5, 6

IN RE A.E.S.H.

[380 N.C. 688, 2022-NCSC-30]

IN THE MATTER OF A.E.S.H.

No. 208A21

Filed 18 March 2022

Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect—drugs, parenting, and home

The trial court did not err in determining that there was a probability of a repetition of neglect if respondent-father's child were returned to his custody, where the child had been removed from the father's custody two years before the termination hearing due to the father's substance abuse, his parenting issues, and the filthy condition of the home. The trial court's findings, which were supported by sufficient evidence, established that the father had tested positive for methamphetamine approximately twenty-three months before the termination hearing, had willfully failed to complete a parenting class despite ample opportunity to do so, had failed to pay child support or find employment, and continued to have no known residence suitable for the child.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 15 February 2021 by Judge Mack Brittain in District Court, Henderson County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Susan F. Davis for petitioner-appellee Henderson County Department of Social Services.

John H. Cobb for appellee Guardian ad Litem.

David A. Perez for respondent-appellant father.

EARLS, Justice.

¶ 1 Respondent-Father appeals from an order terminating his parental rights in his child, A.E.S.H. (Andrew).[1] We affirm the trial court's order.

1. A pseudonym is used to protect the identity of the juvenile and for ease of reading. Andrew's mother is deceased.

I. Background

¶ 2 Andrew was born in August 2009. On 17 January 2019, when Andrew was nine years old, the Henderson County Department of Social Services (HCDSS) filed a juvenile petition alleging that Andrew was a neglected and dependent juvenile, based on conditions observed the day before when the Henderson County Sheriff's Department responded to a medical call at the family's residence in Mills River, North Carolina, relating to Andrew's mother.

¶ 3 However, that was not the first time that Andrew's family had been involved with social services. In 2017 and 2018, when they lived in Asheville, North Carolina, the Buncombe County Department of Social Services (BCDSS) was involved with the family because of the parents' alleged substance abuse, unsanitary conditions in the home, specifically the presence of animal feces, and reports that Andrew had poor hygiene and attended school smelling dirty.

¶ 4 After Andrew's family moved to Mills River, North Carolina, HCDSS received a report on 14 November 2018 concerning the unsanitary condition of that home including animal feces throughout the house. HCDSS closed this case in December 2018 after the family was provided resources and cleaned up the home.

¶ 5 On 16 January 2019, when officers responded to the medical call, they stated that Andrew's mother's condition was so shocking she "looked like something out of a horror movie." According to the officers, her body was swollen and she was lying in her own waste. Andrew's mother was diabetic, bedridden, and suffered from degenerative bone disease. After refusing to take her medication, she was transported to the hospital. The officers saw animal feces throughout the home and noted a strong odor of ammonia due to cat urine.

¶ 6 That same day, HCDSS became involved. HCDSS learned from the officers that Andrew's mother was unresponsive and on a ventilator in the Intensive Care Unit at Pardee Hospital. HCDSS also learned that upon her arrival at the hospital, she was diagnosed with alcohol dependence, multiple organ failure, internal bleeding, and had feces between her toes.

¶ 7 A HCDSS social worker visited the home where they also observed animal feces throughout the living areas. They noted there was a hole a few inches wide in Andrew's room leading to the exterior of the home. Andrew explained that cats come in and out through the hole, and he was trying to fix it as they were touring the home. Andrew appeared and

smelled dirty and he had not eaten all day. There were empty beer cans throughout the home and piles of beer cans on each side of the bed. Respondent-father admitted that Andrew's mother had been bedridden for at least six days, during which time she refused food and medicine and defecated and urinated on herself in the bed. Respondent-father further acknowledged that he had been sleeping in the bed with her and that uncleanliness also led to her bleeding from her private area. Andrew told the HCDSS social worker that his mother had been trying to eat cigarettes, her phone, and pillows.

¶ 8 HCDSS social workers also were concerned about the family's obviously malnourished dog whose ribs were visible. Respondent-father was arrested at the home that day and charged with felony cruelty to animals. Just two days earlier, on 14 January 2019, respondent-father had been indicted on sex offense charges. At the time of his arrest for felony cruelty to animals, respondent-father was a registered sex offender and had nine previous convictions of taking indecent liberties with a minor for incidents that occurred between 2005 and 2009. None of these incidents involved Andrew.

¶ 9 HCDSS social workers sought to speak with both respondent-father and Andrew's mother on 16 January 2019 about alternative placements for Andrew and plans for his care. However, Andrew's mother was too ill to be interviewed. Respondent-father was unable to name any appropriate placements for Andrew or develop a plan for his care. On 17 January 2019, Andrew's mother passed away and Andrew was placed into HCDSS custody where he has remained ever since.

¶ 10 The trial court adjudicated Andrew neglected following a hearing on 7 February 2019, at which respondent-father was present. The court granted custody to HCDSS, and placed Andrew in foster care. The trial court determined that Andrew was a neglected juvenile for three reasons: (1) Andrew was residing in a home that was unsuitable due to filth, (2) Respondent-father's substance abuse, and (3) Respondent-father's parenting issues. The primary permanent plan was reunification, and the trial court ordered respondent-father to complete a reunification plan in order to regain custody.

¶ 11 On 28 February 2019, respondent-father was arrested for felony domestic neglect of a disabled or elder person and misdemeanor child abuse. Although released on bond a month later, respondent-father was subsequently rearrested in April 2019 pursuant to a bill of indictment and was convicted in August 2019 of felony cruelty to animals, felony domestic neglect of a disabled or elder person, and misdemeanor child abuse. He was released from the Department of Corrections on 15 August 2020.

¶ 12 Review hearings were held on 9 May 2019, 8 August 2019, and 2 July 2020. After each hearing, the trial court entered an order finding that respondent-father had not made adequate progress within a reasonable time under the reunification plan. On 12 August 2020, HCDSS moved to terminate respondent-father's parental rights in Andrew.[2] In support of its motion to terminate respondent-father's parental rights, HCDSS alleged that: (1) Respondent-father neglected Andrew, and it was probable there would be a repetition of neglect if Andrew were returned to Respondent-father's care, *see* N.C.G.S.§ 7B-1111(a)(1) (2021); and (2) Respondent-father had willfully left Andrew in foster care for more than twelve months without showing reasonable progress under the circumstances to correct the conditions that led to Andrew's removal, *see* N.C.G.S. § 7B-1111(a)(2) (2021).

¶ 13 The motion to terminate respondent-father's parental rights was heard on 4 February 2021. On 15 February 2021, the trial court entered an order terminating respondent-father's parental rights, on two grounds. First, pursuant to N.C.G.S. § 7B-1111(a)(1), the trial court found that respondent-father neglected Andrew, and there is a probability that such neglect would recur if Andrew was returned to respondent-father's care. Second, pursuant to N.C.G.S. § 7B-1111(a)(2), the trial court found that Respondent-father willfully left Andrew in foster care for more than twelve months without showing to the satisfaction of the court that reasonable progress under the circumstances had been made in correcting the conditions which led to Andrew's removal. The trial court determined it is in Andrew's best interests that Respondent-father's parental rights be terminated. Respondent-father appeals.

II. Analysis

¶ 14 Respondent-father's first argument on appeal is that the trial court erred in terminating his parental rights in Andrew based upon neglect pursuant to N.C.G.S. § 7B-1111(a)(1). Respondent-father contends that the trial court's findings of fact were insufficient to establish that there is a probability that his neglect of Andrew is either continuing or likely to reoccur in the future. Respondent-father also argues that because some of the trial court's challenged findings of fact relating to its determination of neglect are unsupported by clear and convincing evidence, the trial court erred in concluding that his parental rights in Andrew were

2. Although this 12 August 2020 motion in the cause was voluntarily dismissed without prejudice on 10 November 2020, a renewed motion in the cause seeking the same relief was filed the next day that was identical except for the addition of an allegation that "the father has been in and out of prison during the lifetime of the juvenile."

subject to termination. We hold that the trial court's findings are supported by the evidence and are sufficient to support its determination that there is a likelihood that Andrew would be neglected in the future if returned to respondent-father's custody.

¶ 15 A trial court may terminate an individual's parental rights if it concludes the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. N.C.G.S. § 7B- 1111(a)(1). A neglected juvenile is defined, in pertinent part, as a juvenile "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; . . . or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019). "Termination of parental rights based upon this statutory ground [under N.C.G.S. § 7B-1111(a)(1)] requires a showing of neglect at the time of the termination hearing . . .." *In re D.L.W.*, 368 N.C. 835, 843 (2016). A prior adjudication of neglect is not determinative in a termination-of-parental-rights proceeding. *In re J.W.*, 173 N.C. App. 450, 455 (2005); *In re Stewart*, 82 N.C. App. 651, 653 (1986).

¶ 16 However, "if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent." *In re D.L.W.*, 368 N.C. at 843. This is because "in most termination cases the children have been removed from the parent['s] custody before the termination hearing." *In re Beasley*, 147 N.C. App. 399, 404 (2001). In such a situation, "[a] parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re M.A.*, 374 N.C. 865, 870 (2020) (quoting *In re M.J.S.M.*, 257 N.C. App. 633, 637 (2018)). The trial court may also look to the historical facts of a case to predict the probability of a repetition of neglect. *In re McLean*, 135 N.C. App. 387, 396 (1999).

¶ 17 Here, Andrew had been in HCDSS's custody since 16 January 2019. The trial court found that the circumstances contributing to Andrew's foster care placement were respondent-father's substance abuse, his parenting issues, and the fact that Andrew was residing in a home that was unsuitable and filthy. After Andrew was adjudicated neglected on 7 February 2019, Respondent-father was granted supervised visits for a minimum of one hour per week, scheduled on Mondays from 3:30 p.m. to 4:30 p.m. respondent-father was required to give HCDSS a 24-hour advance confirmation that he would attend the visit. To work toward reunification with Andrew, the trial court ordered respondent-father to complete several requirements including drug screens and parenting classes.

¶ 18 We review a trial court's adjudication of grounds to terminate parental rights "to determine whether the findings are supported by clear,

cogent and convincing evidence and the findings support the conclusions of law." *In re E.H.P.*, 372 N.C. 388, 392 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111 (1984)). "A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379 (2019). We note that the "trial court need not make a finding as to every fact which arises from the evidence; rather, the court need only find those facts which are material to the resolution of the dispute." *Witherow v. Witherow*, 99 N.C. App. 61, 63 (1990), *aff'd per curiam*, 328 N.C. 324 (1991). "The trial court's conclusions of law are reviewable de novo on appeal." *In re C.B.C.*, 373 N.C. 16, 19 (2019).

¶ 19 On the issue of neglect, respondent-father primarily argues that the findings of fact are not sufficient to establish that there is a probability of a repetition of neglect in the future. The findings respondent-father addresses include the following:

> 27. During the time [Respondent-father] was not incarcerated he was asked to submit to one drug screen. On April 5, 2019, he tested positive for Methamphetamine.
>
> 28. [Respondent-father] failed to engage with and complete a parenting class during his incarceration or at any time when he was not incarcerated. [Respondent-father] was given the opportunity to participate in a parenting class while incarcerated, but failed to do so.
>
> . . . .
>
> 30 [Respondent-father] was directed to pay child support. That obligation was suspended during his times of incarceration. However, [Respondent-father] paid $0.00 in support, either directly or indirectly during the times he was not incarcerated.
>
> . . . .
>
> 33. [Respondent-father] continues to have no known income or employment.
>
> 34. [Respondent-father] continues to have no known residence that is suitable for [Andrew]. On November 5, 2020. [Respondent-father] told the Social

> Worker he is "fixing up" the residence and would contact her when the home was ready. [Respondent-father] has not followed up with the Social Worker concerning his residence.

¶ 20 Concerning finding of fact 27, respondent-father argues that there is no record evidence to establish that he used any drugs after the date of his only drug screen on 5 April 2019, which occurred some twenty-three months before the termination hearing. While this is true, finding of fact 27 concerning the failed drug screen is only one of numerous findings. Although standing alone the prior drug use may be fairly remote in time, it is part of the context the court properly took into account.

¶ 21 Next, respondent-father argues that findings of fact 28, 30, and 33 are insufficient because they do not address whether his conduct at issue was willful. As to finding of fact 28, concerning the completion of parenting classes, respondent-father's contention is contradicted by the record. Cynthia Brewer, a correctional case manager with the North Carolina Department of Public Safety, Division of Prisons, who conducts the parenting classes at the facility where respondent-father was incarcerated, testified at the termination hearing that after respondent-father's inquiry into parenting classes, she told him that he could put his name on a list if he was interested. Respondent-father inquired about how many merit days he would earn for attending the parenting classes and Ms. Brewer explained that she was only looking for people to participate in the program who wanted to become better fathers. When Ms. Brewer received the list of the names for the class, respondent-father's name was marked off the list. Because respondent-father was given an opportunity to participate in a parenting program while incarcerated, and Ms. Brewer's list ultimately showed that respondent-father's name had been removed, the trial court's finding that he failed to comply with the requirement of his reunification plan which ordered him to engage in and complete a parenting class during his incarceration is supported by clear and convincing evidence. Respondent-father's conduct in failing to sign up for the parenting class after being given the opportunity to do so is sufficient evidence of willfulness.

¶ 22 Additionally, Andrew's social worker, Gina Warren, testified at the termination hearing that after respondent-father was released from incarceration on 15 August 2020, she informed him of numerous parenting classes available for attendance. In a letter from 6 October 2020, Ms. Warren referred respondent-father to six agencies that facilitated local and online parenting courses. During a face-to-face interaction with Ms. Warren on 5 November 2020, respondent-father confirmed he

had received the October letter from Ms. Warren but requested that she resend the letter. Ms. Warren mailed the letter the next day again listing the six agencies offering parenting classes. Ms. Warren followed up to inquire about respondent-father's progress with engaging and completing a parenting program in letters dated 14 December 2020 and 25 January 2021. Respondent-father failed to respond to her letters to inform her of his progress in completing or even starting a parenting program. This evidence further supports the trial court's finding that when not incarcerated, respondent-father failed to engage in and complete a parenting class. Respondent-father's failure to even begin a parenting class, and his failure to respond to Ms. Warren's inquiries about his progress after being informed of several classes available to him, constitutes sufficient evidence of willfulness.

¶ 23 Turning to findings of fact 30 and 33, respondent-father contends that these findings do not sufficiently support the conclusion that Andrew would be likely to be neglected in the future because there is no showing that he willfully did not pay child support or willfully remained unemployed. However, for a finding of likelihood of future neglect, the relevant question is whether respondent-father will be able to provide for his son. *See, e.g.*, *In re K.L.T.*, 374 N.C. 826, 831 (2020), ("The determinative factors must be the best interests of the child and the fitness of the parent to care for the child at the time of the termination proceeding.") (quoting *In re K.N.*, 373 N.C. 274, 282 (2020)).

¶ 24 Finally, respondent-father disputes finding of fact 34 on the ground that the evidence does not support the finding that his residence was unsuitable. The record shows that Ms. Warren made numerous attempts to inspect respondent-father's residence after he was released from incarceration. Ms. Warren testified at the termination hearing that she last discussed with respondent-father the suitability of a residence for Andrew on 5 November 2020 and had not heard anything about the condition of the home in four months. On 5 November 2020, during a face-to-face meeting, Respondent-father told Ms. Warren that he was "fixing up" his grandmother's residence and would contact her when it was ready because he did not want her to see it unfinished.

¶ 25 Thereafter, Ms. Warren mailed respondent-father three letters inquiring about the condition of his residence. In a 6 November 2020 letter, Ms. Warren asked respondent-father to please contact her about a home visit when he felt the home was suitable. Receiving no response, Ms. Warren mailed a letter to respondent-father on 14 December 2020 inquiring if respondent-father had made any progress toward making the home appropriate. Again, receiving no response, Ms. Warren mailed another

letter on 25 January 2021 asking respondent-father to communicate with her and inquiring if he had made any progress toward making the home suitable for Andrew. Ms. Warren testified that although she knew the address of the grandmother's residence, she had not seen the home because respondent-father had not called her to schedule an appointment to conduct a home study nor invited her to see the home. Because respondent-father told Ms. Warren that he would contact her regarding the suitability of his grandmother's residence for Andrew and failed to communicate with and respond to Ms. Warren's attempts to conduct a home assessment, the trial court's finding that respondent-father did not establish a suitable residence for Andrew is supported by clear and convincing evidence. Importantly, this failure is material to a determination of whether there is a probability of repetition of neglect because the condition of respondent-father's previous two residences led to social services' involvement, Andrew's adjudication as a neglected juvenile, and respondent-father's conviction for misdemeanor child abuse on 28 February 2019.

¶ 26 In sum we conclude the trial court's challenged findings of fact are supported by clear, cogent, and convincing evidence. Further, the trial court's findings of fact support the conclusion that respondent-father neglected Andrew and that, based on the circumstances as they existed at the time of the hearing, it is probable that there would be a repetition of neglect if Andrew was returned to respondent-father's care. Because the existence of a single ground for termination suffices to support the termination of a parent's parental rights in a child, *see In re A.R.A.*, 373 N.C. 190, 194 (2019), we need not reach the issue of whether the trial court erred in terminating respondent-father's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2). Respondent-father does not contest the trial court's determination that, pursuant to N.C.G.S. § 7B-1110, it is in Andrew's best interests to terminate Respondent-father's parental rights.

III. Conclusion

¶ 27 We hold that the trial court did not err in determining that there is a probability of a repetition of neglect if Andrew was returned to respondent-father's custody, and that the existence of this ground for termination is sufficient to support the termination of Respondent-father's parental rights. The trial court's order terminating Respondent-father's parental rights in Andrew is therefore affirmed.

AFFIRMED.

IN RE A.L.I.

[380 N.C. 697, 2022-NCSC-31]

IN THE MATTER OF A.L.I.

No. 266A21

Filed 18 March 2022

Jurisdiction—termination of parental rights case—sufficiency of service of process—statutory requirements—type of jurisdiction implicated

The trial court properly exercised jurisdiction over a private termination of parental rights matter in which respondent-father, a nonresident, alleged on appeal that the court lacked subject matter jurisdiction over him because he was not properly served with a summons as required by N.C.G.S. § 7B-1101. Respondent's argument implicated personal, not subject matter, jurisdiction, and since he participated in the hearing without objection, he waived any argument regarding insufficient service of process.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 9 June 2021 by Judge William F. Brooks in District Court, Wilkes County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Mary McCullers Reece for respondent-appellant father.

No brief filed by petitioner-appellee mother.

No brief filed by Guardian ad Litem.

NEWBY, Chief Justice.

¶ 1 Respondent, the father of A.L.I. (Amy), appeals from the trial court's order terminating his parental rights.[1] After careful review, we affirm.

¶ 2 Amy was born on 29 July 2013 to petitioner-mother and respondent. Though petitioner and respondent never married, they lived together with Amy for approximately two years. On 2 August 2016, petitioner took

1. A pseudonym is used in this opinion to protect the juvenile's identity and for ease of reading.

out a domestic violence protective order in Mecklenburg County, which lasted one year. Respondent then filed a custody action in Cabarrus County. While the custody action was pending, respondent took Amy and fled the state. At that time, respondent had an outstanding order for his arrest due to his failure to appear and serve jail time for a conviction of felony second-degree burglary. After respondent refused to return to the state with Amy, a child custody order was entered in Cabarrus County on 11 April 2017, granting petitioner exclusive care, control, and custody of Amy. Respondent was arrested in New York on or about 28 April 2017 and remained incarcerated in New York for the remainder of the trial court proceedings. After respondent's arrest, petitioner picked up Amy in New York in May of 2017. Since then, Amy has remained with petitioner.

¶ 3 Petitioner filed a petition to terminate respondent's parental rights to Amy on 17 April 2020. The trial court held a pretrial hearing on 30 April 2021 where petitioner's counsel stated that respondent "was served with a summons and the petition on May the 8th, 2020 via personal service at Bare Hill Correctional Facility in New York State." During the proceedings, respondent wrote several letters to the trial court, was represented by counsel, and fully participated in the hearings remotely. Following a hearing on 30 April 2021, in which respondent participated remotely and his counsel in person, the trial court entered an order on 9 June 2021 concluding that grounds existed to terminate respondent's parental rights based upon neglect and willful abandonment.[2] *See* N.C.G.S. § 7B-1111(a)(1), (7) (2021).

¶ 4 The only argument presented on appeal, which is here raised for the first time, is that the trial court did not have subject matter jurisdiction to terminate respondent's parental rights. According to respondent, since he is a nonresident, N.C.G.S. §§ 7B-1101 and 7B-1106 (2021) require that he be served with a summons in order to confer subject matter jurisdiction upon the trial court.[3] In respondent's view the requirement in N.C.G.S. § 7B-1101 that "before exercising jurisdiction under this Article regarding the parental rights of a nonresident parent, the court shall find . . . that process was served on the nonresident parent" pertains to the trial court's exercise of subject matter jurisdiction rather than personal

2. In that order, the trial court found that "[respondent] was personally served at Bare Hill with the summons and petition in this action on May 8, 2020." Nonetheless, for purposes of this opinion, we assume that respondent was not properly served with the summons.

3. Respondent relies upon an unpublished opinion from the Court of Appeals. *See In re P.D.*, No. COA16-1317, 2017 WL 3255343 (N.C. Ct. App. Aug. 1, 2017) (unpublished).

jurisdiction. N.C.G.S. § 7B-1101. Respondent contends that since there is no evidence in the record to support a finding that respondent was served with a summons, the trial court lacked subject matter jurisdiction to terminate his parental rights. Thus, the question presented in this appeal is whether the statutory language refers to personal jurisdiction or subject matter jurisdiction. Directed by our prior decisions, we determine the language relates to personal jurisdiction.

¶ 5 Pursuant to the broad language of N.C.G.S. § 7B-1101, a trial court has "exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who . . . is found in . . . the district at the time of filing of the petition or motion." *Id.* "Because litigants cannot consent to jurisdiction not authorized by law, they may challenge 'jurisdiction over the subject matter . . . at any stage of the proceedings, even after judgment.' " *In re T.R.P.*, 360 N.C. 588, 595, 636 S.E.2d 787, 793 (2006) (alteration in original) (quoting *Pulley v. Pulley*, 255 N.C. 423, 429, 121 S.E.2d 876, 880 (1961)). Thus, "[a] rguments regarding subject matter jurisdiction may even be raised for the first time before this Court." *Id.* Arguments of insufficient service of process, however, "are defenses that implicate personal jurisdiction and thus can be waived by the parties." *In re J.T.*, 363 N.C. 1, 4, 672 S.E.2d 17, 19 (2009); *see* N.C.G.S. § 1A-1, Rule 12(h)(1) (2021) ("A defense of . . . insufficiency of service of process is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof . . . .").

¶ 6 In cases arising under the Juvenile Code as with other civil matters, deficiencies in the issuance or service of a summons affect a trial court's jurisdiction over the parties to an action and not over the subject matter of the case. *See In re K.J.L.*, 363 N.C. 343, 348, 677 S.E.2d 835, 838 (2009). In *In re K.J.L.*, Davidson County Department of Social Services (DSS) filed a juvenile petition alleging that the juvenile was neglected and dependent, but a summons was never issued. *Id.* at 344–45, 677 S.E.2d at 836–37. Nonetheless, both parents stipulated that the juvenile was neglected, and the trial court entered an order to that effect. *Id.* at 344, 677 S.E.2d at 836. DSS then filed a petition to terminate both parents' parental rights, and a summons was properly issued and served. *Id.* The respondent-mother participated in the TPR hearing without objecting to the trial court's jurisdiction, and the trial court entered an order terminating her parental rights.[4] *Id.* The respondent-mother appealed,

4. The respondent-father did not respond to the TPR petition and failed to appear at the hearing. *In re K.J.L.*, 363 N.C. at 344, 677 S.E.2d at 836. The trial court's order also terminated the respondent-father's parental right, but he did not appeal. *Id.*

and the Court of Appeals concluded that the trial court lacked subject matter jurisdiction to terminate the respondent-mother's parental rights because a summons was never issued in the neglect and dependency proceeding. *Id.* at 344–45, 677 S.E.2d at 836.

¶ 7 We reversed the decision of the Court of Appeals. *Id.* at 348, 677 S.E.2d at 838. In doing so, we explained that "the summons is not the vehicle by which a court obtains subject matter jurisdiction over a case, and failure to follow the preferred procedures with respect to the summons does not deprive the court of subject matter jurisdiction." *Id.* at 346, 677 S.E.2d at 837. We further noted that "[b]ecause the summons affects jurisdiction over the person rather than the subject matter, . . . a general appearance by a [respondent-parent] 'waive[s] any defect in *or nonexistence of* a summons.' " *Id.* at 347, 677 S.E.2d at 837 (emphasis and fourth alteration in original) (quoting *Dellinger v. Bollinger*, 242 N.C. 696, 698, 89 S.E.2d 592, 593 (1955)). Therefore, we concluded that "[a]ny deficiencies in the issuance and service of the summonses in the neglect and TPR proceedings at issue in this case did not affect the trial court's subject matter jurisdiction, and any defenses implicating personal jurisdiction were waived by the parties." *Id.* at 348, 677 S.E.2d at 838.

¶ 8 Similarly, in *In re J.T.*, we addressed various issues regarding the issuance and service of a summons in a TPR action. *In re J.T.*, 363 N.C. at 2, 672 S.E.2d at 17. There a summons was issued, but it failed to name the juveniles as respondents and was never served upon the juveniles through a GAL. *Id.* at 3, 672 S.E.2d at 18. We explained that

> [i]t is inconsequential to the trial court's subject matter jurisdiction that no summons named any of the three juveniles as respondent and that no summons was ever served on the juveniles or their GAL. These errors are examples of insufficiency of process and insufficiency of service of process, respectively, both of which are defenses that implicate personal jurisdiction and thus can be waived by the parties. The full participation of the juveniles' GAL and the attorney advocate throughout the TPR proceedings, without objection to the trial court's exercise of personal jurisdiction over the juveniles, constituted a general appearance and served to waive any such objections that might have been made.

Id. at 4–5, 672 S.E.2d at 19 (citations omitted) (citing N.C.G.S. § 1A-1, Rule 12(h)(1) (2007); *Harmon v. Harmon*, 245 N.C. 83, 86, 95 S.E.2d

355, 359 (1956)). In other words, the arguments about deficiencies in the summons and insufficient service were waived when not presented to the trial court. *Id.* Therefore, we concluded that "the trial court's subject matter jurisdiction was properly invoked." *Id.* at 4, 672 S.E.2d at 19.

¶ 9 A parent's status as a nonresident does not alter the fact that arguments of insufficient service of a summons pertain to personal jurisdiction rather than subject matter jurisdiction. *See In re K.J.L.*, 363 N.C. at 346, 677 S.E.2d at 837; N.C.G.S. § 1A-1, Rule 12(h)(1). Reading N.C.G.S. § 7B-1101 in conjunction with Rule 12(h)(1) and our prior decisions, it is clear that if a nonresident respondent-parent participates in the TPR proceedings without raising an objection to the trial court exercising personal jurisdiction, then he waives any argument of insufficient service of process. *See In re J.T.*, 363 N.C. at 4, 672 S.E.2d at 19; *In re K.J.L.*, 363 N.C. at 348, 677 S.E.2d at 838. Here respondent fully participated in the proceedings and was represented by counsel. Respondent personally wrote several letters to the trial court and was present at the hearings via speakerphone. Since respondent appeared in the proceeding without preserving his objection to the trial court's exercise of personal jurisdiction over him, his argument regarding insufficient service of process is waived.

¶ 10 Regardless of a respondent-parent's residency status, the issuance and service of a summons do not affect a trial court's subject matter jurisdiction in a TPR action. Here the trial court's subject matter jurisdiction was properly invoked. Since the alleged summons-related deficiencies implicate personal jurisdiction not subject matter jurisdiction, respondent waived his insufficient service argument by participating in the proceedings without objecting. Therefore, we affirm the trial court's 9 June 2021 order terminating respondent's parental rights.

AFFIRMED.

IN RE A.N.D.

[380 N.C. 702, 2022-NCSC-32]

IN THE MATTER OF A.N.D., A.N.D., AND A.C.D.

No. 113A21

Filed 18 March 2022

Termination of Parental Rights—best interests of the child—factual findings—statutory factors

The trial court did not abuse its discretion by concluding that termination of a father's parental rights was in his children's best interests, where the dispositional findings were supported by sufficient evidence and the court properly considered the statutory factors in N.C.G.S. § 7B-1110(a) and performed a reasoned analysis in reaching its conclusion. Although one of the findings incorrectly listed certain crimes as ones for which the father had been convicted, the finding nonetheless accurately characterized his criminal history as "extensive"; further, the appellate court rejected the father's arguments that the trial court erred by failing to consider the impact of the coronavirus restrictions and options short of termination.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) from an order entered on 16 December 2020 by Judge V.A. Davidian III in District Court, Wake County. This matter was calendared for argument in the Supreme Court on 22 December 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Mary Boyce Wells for petitioner-appellee Wake County Human Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Leslie Rawls for respondent-appellant father.

BERGER, Justice.

¶ 1 Respondent[1] appeals from the trial court's order terminating his parental rights in A.N.D. (Andrew),[2] born December 2009; A.N.D. (Adam),

1. The trial court's order also terminated the parental rights of the minor children's mother, who is not a party to this appeal.

2. Pseudonyms are used throughout the opinion to protect the identities of the children and for ease of reading.

born February 2011; and A.C.D. (Anna), born July 2016, based on neglect and failure to show reasonable progress in correcting the conditions which led to the removal of the children from the home. We affirm the trial court's order.

I. Factual and Procedural Background

¶ 2 On April 29, 2015, Wake County Human Services (DSS) filed a juvenile petition alleging that Andrew, Adam, and "Nigel"[3] were neglected juveniles. The petition alleged that the children witnessed two domestic violence incidents between the children's mother and Nigel's father and the parents had substance abuse issues. Nigel was placed in foster care and Andrew and Adam remained in the care of their maternal grandmother. At that time, respondent was in federal custody and unable to provide care for Andrew and Adam.

¶ 3 In May 2015, the trial court found that respondent was still incarcerated with an expected release date in October 2015, and suspended respondent's visitation with the children. On September 3, 2015, the court adjudicated Andrew and Adam neglected juveniles and granted legal and physical custody to their maternal grandmother.

¶ 4 On September 12, 2017, DSS filed a petition alleging Anna[4] to be a neglected juvenile. The petition alleged that the maternal grandmother was unable to obtain timely medical care for Anna because both parents were incarcerated and could not provide consent for treatment. Following a hearing in February 2018, the trial court determined, and respondent agreed, that it was in Anna's best interests for the maternal grandmother to be appointed as Anna's legal custodian. The trial court adjudicated Anna as a neglected juvenile on March 14, 2018, and placed her in the custody of the maternal grandmother along with Andrew and Adam. The trial court suspended respondent's visitation with Anna and ordered him to enter into a case plan with DSS.

¶ 5 On September 12, 2018, the trial court entered an order granting DSS nonsecure custody of all three children following the filing of a DSS petition alleging that Andrew, Adam, and Anna were abused, neglected, and dependent juveniles. The petition included allegations that the

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3. Nigel, born December 11, 2014, shares the same mother as Andrew, Adam, and Anna but has a different father. Nigel's father is not a party to this appeal.

4. Anna is respondent's third child. In September 2016, the mother was in a car accident with Anna in the car. Anna was taken to the hospital, and her mother was taken into custody. After this incident, Anna was placed in the care of her maternal grandmother along with Andrew and Adam.

maternal grandmother had been arrested for driving while impaired and child abuse, among other allegations. This was the second time that the maternal grandmother had been charged with driving while impaired and child abuse within a six-month period. At that time, the children could not be placed with respondent, as he was residing in a "rooming house" that was not appropriate for children, and he could not provide for their care.

¶ 6 The trial court entered a consent order on adjudication and disposition on November 20, 2018. At the time of the hearing on adjudication and disposition, respondent was incarcerated in the Wake County Detention Center following his arrest for assault with a deadly weapon inflicting serious injury. DSS placed the children in foster care, and the trial court suspended respondent's visitation.

¶ 7 On October 11, 2019, DSS filed a motion to terminate respondent's parental rights in Andrew, Adam, and Anna, alleging that grounds existed for termination based on neglect, willfully leaving the minor children in foster care without showing reasonable progress in correcting the conditions which led to the removal of the children from the home, and failing to pay a reasonable portion of the cost of care for the children for a period of six months while the children remained in foster care.

¶ 8 In an order entered after a February 2020 hearing, the trial court found that respondent did not cooperate with recommended services in his case plan. The primary permanent plan was changed to adoption, with a secondary plan of reunification. In a June 11, 2020 order, the trial court determined that respondent resided in a "structurally sound" residence but that he refused to participate with his case plan and failed to comply with random drug screens. The trial court further found that respondent was not making adequate progress within a reasonable time, and his behavior was "inconsistent with the children's health and safety."

¶ 9 The trial court determined that grounds existed to terminate respondent's parental rights under N.C.G.S. § 7B-1111(a)(1) and (2) and that it was in the children's best interests that respondent's parental rights be terminated.

¶ 10 On appeal, respondent does not challenge the trial court's grounds for termination. Instead, respondent argues that the trial court abused its discretion in concluding that it was in Andrew's, Adam's, and Anna's best interests to terminate respondent's parental rights. Specifically, respondent argues that finding of fact 39 "misrepresents and mischaracterizes" his criminal history and the trial court failed to consider the impact of the coronavirus pandemic and options short of termination of his parental rights in its analysis.

II. Analysis

¶ 11 Our Juvenile Code provides a two-stage process for terminating parental rights: an adjudication stage and a dispositional stage. *See* N.C.G.S. §§ 7B-1109, -1110 (2021). At the adjudication stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under N.C.G.S. § 7B-1111(a). N.C.G.S. § 7B-1109(e), (f). If one or more grounds exist for termination of parental rights, the court proceeds to the dispositional stage. N.C.G.S. § 7B-1110(a). At the dispositional stage, the trial court must "determine whether terminating the parent's rights is in the juvenile's best interest" based on the following criteria:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

Id.

¶ 12 This Court reviews "the trial court's dispositional findings of fact to determine whether they are supported by competent evidence." *In re E.S.*, 378 N.C. 8, 2021-NCSC-72, ¶ 11 (quoting *In re J.J.B.*, 374 N.C. 787, 793, 845 S.E.2d 1, 5 (2020)).[5] If supported by competent evidence, the trial court's findings are binding on appeal. *In re A.M.O.*, 375 N.C. 717, 720, 850 S.E.2d 884, 887 (2020). "[A]ssessment of a juvenile's best interest . . . is reviewed only for abuse of discretion." *In re A.R.A.*, 373 N.C. 190, 199, 835 S.E.2d 417, 423 (2019). A trial court's determination in a termination-of-parental-rights case "will remain undisturbed . . . so long as that determination is not 'manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.' "

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5. Recently, this Court has noted that despite precedent using the term "competent evidence" in describing the applicable standard of review in such an analysis, N.C.G.S. § 7B-906.1(c) instructs that the evidence a trial court may receive and consider need not be limited to that which is "competent." *See Matter of C.C.G.*, 2022-NCSC-3 n. 4.

In re A.M., 377 N.C. 220, 2021-NCSC-42, ¶ 18 (quoting *In re A.U.D.*, 373 N.C. 3, 6–7, 832 S.E.2d 698, 700–01 (2019)).

¶ 13 Respondent first challenges finding of fact 39 for its inclusion of "duplicate charges, dismissed charges, and charges that resulted in not guilty judgments." In finding of fact 39, the trial court found that respondent

> has an extensive criminal history and has served several extended prison sentences for the following offenses: felony and misdemeanor breaking and entering, interfering with emergency communications, misdemeanor larceny, assault on a female, possession and distribution of cocaine and habitual misdemeanor assault. He was again arrested in mid-2019 and released in November 2019.

¶ 14 Respondent correctly asserts that there is no support in the record for the trial court's finding that he was convicted of breaking and entering and possession of cocaine. However, a certified copy of respondent's criminal history in the record provides competent evidence for the remaining convictions set forth in finding of fact 39. Specifically, competent evidence in the record indicates that respondent was previously convicted of at least one count of (1) interfering with emergency communications; (2) misdemeanor larceny; (3) assault on a female; (4) distribution of cocaine; and (5) habitual misdemeanor assault. Thus, competent evidence supports the characterization of respondent's criminal history included in finding of fact 39.

¶ 15 Respondent next argues that the trial court's decision to terminate his parental rights was "manifestly unsupported by reason" because the trial court failed to consider the impact that coronavirus restrictions had on his housing and employment as a "relevant factor" in its best interest analysis. However, respondent did not have suitable housing before or after the filing of the October 2019 motion to terminate parental rights. Respondent concedes this fact in his brief when he states that "[respondent] was not able to obtain housing that would enable him to have his children in the home." Respondent further states in his brief that when he was not incarcerated, there was no place in which he resided that "could accommodate the children."

¶ 16 Regarding employment, respondent maintained fairly steady employment during the periods in which he was not incarcerated. While respondent was laid off from employment at a restaurant due to coronavirus restrictions, respondent admitted that his income increased after

he was laid off and that he could have worked but chose not to. Although coronavirus restrictions may have impacted respondent's housing and employment situations, respondent acknowledged that he did not have a plan for his family and that it could take up to a year to obtain a suitable residence.

¶ 17 Respondent here has not demonstrated that the trial court's determination that termination of parental rights was in the best interests of the minor children was not the product of a reasoned decision. *See In re A.U.D.*, 373 N.C. at 6–7, 832 S.E.2d at 700–01. The trial court properly considered the relevant statutory factors set forth in N.C.G.S. § 7B-1110(a) before concluding that termination was in the children's best interests. Specifically, the trial court made the following unchallenged findings of fact:

> 54. The children reside together in a licensed foster home in Franklin County, North Carolina. The children have bonded closely with their foster family and the family intends to adopt all four children.
>
> 55. The foster family has a good relationship with [respondent] and intend[s] to encourage contact between him and the children.
>
> 56. [Andrew] and [Adam], ages 10 and 9, attend Youngsville Elementary School and [are] making some academic progress. They both are diagnosed with Adjustment Disorder and they continue to receive outpatient therapy. Both children wish to remain with the foster parents because they feel safe, secure and supported in the home.
>
> 57. [Nigel], age 5, attends daycare at the Learning Experience in Franklin County and does not receive additional services. [Nigel] appears to be developmentally on-target.
>
> 58. [Anna], age 4, refers to the foster family as "mommy" and "daddy" and has strongly bonded with the family. . . .
>
> 59. There is a high likelihood of adoption for all four children.
>
> 60. Adoption is one of the children's concurrent permanency plans, and termination of parental rights is necessary to accomplish this plan.

. . . .

> 63. While it is clear that the children have a bond with [respondent] and that [respondent] loves his children, that love does not equate to an ability to provide permanence and daily parenting. These children finally have stability in their lives after many years and they are thriving.

¶ 18 These unchallenged findings of fact are binding on appeal and further show that the trial court's decision was not "manifestly unsupported by reason or . . . so arbitrary that it could not have been the result of a reasoned decision." *In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 18 (quoting *In re A.U.D.*, 373 N.C. at 6–7, 832 S.E.2d at 698, 700–01). Thus, the trial court did not abuse its discretion when it terminated respondent's parental rights to the minor children.

¶ 19 Finally, respondent argues that the trial court did not consider "options short of termination that would have preserved the family relationship." However, as set forth above, the trial court properly considered the statutory factors in N.C.G.S. § 7B-1110(a) and determined that a permanent plan of care could only be obtained by a "severing of the relationship between the children and [respondent]." Respondent has again failed to show that the trial court abused its discretion by terminating his parental rights. Therefore, we affirm the trial court's order terminating respondent's parental rights.

III. Conclusion

¶ 20 The trial court did not abuse its discretion in determining that termination of respondent's parental rights was in the best interests of Andrew, Adam, and Anna, and we affirm the trial court's order.

AFFIRMED.

IN RE C.S.

[380 N.C. 709, 2022-NCSC-33]

IN THE MATTER OF C.S.

No. 90A21

Filed 18 March 2022

1. Termination of Parental Rights—grounds for termination—neglect—past neglect—other parent's conduct

The trial court did not err by determining that a father's parental rights in his son were subject to termination on the grounds of neglect where the showing of past neglect was based on the mother's (rather than the father's) conduct.

2. Termination of Parental Rights—best interests of the child—relevant factors—bond between parent and child

The trial court did not abuse its discretion in determining that termination of a father's parental rights was in his son's best interests where, contrary to the father's argument on appeal, the court made findings concerning all relevant factors—specifically, the bond between the father and son, by finding that the father obviously loved the son but that their bond was outweighed by the son's need for a safe, nurturing, stable environment.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 8 December 2020 by Judge Clinton Rowe in District Court, Carteret County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Stephanie Sonzogni for petitioner-appellee Carteret County Department of Social Services; and William L. Esser IV for appellee Guardian ad Litem.

Jeffrey L. Miller for respondent-appellant father.

BARRINGER, Justice.

¶ 1 Respondent appeals from an order terminating his parental rights to the minor child C.S. (Carl).[1] After careful review, we hold that the trial

1. A pseudonym is used in this opinion to protect the juvenile's identity and for ease of reading.

court did not err in finding past neglect or in determining that there was a likelihood of future neglect and that terminating respondent's rights was in Carl's best interests. Accordingly, we affirm the trial court's order terminating respondent's parental rights.

I. Factual and Procedural Background

¶ 2 When Carl was born, although Carl's mother was married, her estranged husband denied paternity. Subsequent genetic testing excluded the estranged husband as Carl's biological father.

¶ 3 A social worker from Carteret County Department of Social Services (DSS) visited the family and found that Carl appeared thin. The social worker scheduled a weight check at Carteret General Hospital. At the weight check, Carl weighed 12.5% less than he did at birth. Carl was hospitalized and quickly gained weight, causing the doctor to opine that his failure to thrive was due to receiving insufficient calories. However, Carl's mother refused to nurse, pump, or wake up at night to feed him. DSS filed a juvenile petition alleging that Carl was neglected and dependent. Additionally, DSS obtained nonsecure custody of Carl and placed him in foster care.

¶ 4 Carl's mother identified respondent as the potential father of Carl. A paternity test confirmed that respondent was Carl's biological father. The trial court entered a consent adjudication order, signed by respondent and his attorney, as well as the other relevant parties, adjudicating Carl a neglected and dependent juvenile. Carl's mother later relinquished her parental rights to Carl.

¶ 5 Following a hearing that respondent did not attend, the trial court established a primary plan for Carl of reunification with a secondary plan of adoption. Respondent was ordered to refrain from using nonprescribed and illegal substances; submit to random drug screens; complete a substance abuse assessment and follow all recommendations; complete a parenting assessment/psychological evaluation and follow all recommendations; complete parenting classes; maintain stable housing; provide proof of employment and a budget; keep his social worker updated with pertinent information; and sign necessary releases to allow DSS to access information from the required assessments and related records. The trial court granted respondent one hour of weekly supervised visitation with Carl.

¶ 6 Respondent failed to attend the initial review hearing held on 14 June 2019. In the resulting order, the trial court noted that respondent was failing to engage in the reunification plan, was failing to consistently

attend visitations, had not been communicating with his social worker, and had missed a scheduled Child and Family Team Meeting. Afterwards, respondent continued to not follow through with any of the services outlined in his reunification plan and, on 25 June 2019, was arrested for violating a domestic violence protective order. On 28 August 2019, the trial court changed Carl's primary permanent plan to adoption with a secondary plan of reunification with respondent.

¶ 7 Respondent finally attended his first Child and Family Team meeting after the trial court changed Carl's permanent plan to adoption. Additionally, after the permanent plan changed, respondent started to attend visitations with Carl more consistently. Yet, at the visits, respondent spent considerable time viewing and taking pictures of Carl's genitals and bottom during diaper changes. After being instructed to refrain from photographing Carl's genitals, respondent complained and stopped changing Carl's diaper during visitations. Respondent also ignored the social worker's attempts to redirect or instruct him regarding Carl's needs and often failed to provide appropriate food or supplies at visits. After several weeks of visitations during which the social worker attempted to instruct him on appropriate behaviors and interactions with Carl, respondent engaged less with Carl during the visits.

¶ 8 In a subsequent permanency-planning-review order, the trial court again found respondent had failed to make sufficient progress towards reunification. The trial court found that respondent had recently been charged with rape; had taken photographs of his son's genital area on numerous visitations; had failed to complete the recommended mental health and substance abuse treatment or to complete a parenting evaluation; lacked safe, stable, and long-term housing; had failed to provide DSS with a current address, employment verification, or a budget; and had otherwise failed to maintain consistent contact with DSS. The trial court concluded that it was in Carl's best interests that the primary plan be adoption with a secondary plan of reunification and that termination of parental rights was required to effectuate this plan.

¶ 9 On 19 November 2019, DSS filed a motion to terminate respondent's parental rights to Carl on the grounds of neglect, failure to pay a reasonable portion of the costs of care for Carl for the preceding six months, and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (3), (6) (2021). The trial court entered an order terminating respondent's parental rights on 8 December 2020. In the order, the trial court adjudicated that a ground existed to terminate respondent's parental rights for neglect under N.C.G.S. § 7B-1111(a)(1). The trial court further determined that terminating respondent's rights was in Carl's best interests.

¶ 10 Respondent appealed. On appeal, respondent challenges the trial court's adjudication that the ground of neglect existed to terminate his parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) as well as the trial court's determination that termination was in Carl's best interests.

II. Analysis

A. Standard of Review

¶ 11 The North Carolina Juvenile Code sets out a two-step process for termination of parental rights: an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109 to -1110 (2021). At the adjudicatory stage, the trial court takes evidence, finds facts, and adjudicates the existence or nonexistence of the grounds for termination set forth in N.C.G.S. § 7B-1111. N.C.G.S. § 7B-1109(e). If the trial court adjudicates that one or more grounds exist, the trial court then proceeds to the dispositional stage where it determines whether termination of parental rights is in the juvenile's best interests. N.C.G.S. § 7B-1110(a).

¶ 12 Appellate courts review a trial court's adjudication to determine whether the findings are supported by clear, cogent, and convincing evidence and whether the findings support the conclusions of law. *In re N.P.*, 374 N.C. 61, 62–63 (2020). In doing so, we limit our review to "only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407 (2019). "A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379 (2019). Further, "[f]indings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. at 407. We review the trial court's conclusions of law de novo. *In re C.B.C.*, 373 N.C. 16, 19 (2019).

¶ 13 "The [trial] court's assessment of a juvenile's best interest at the dispositional stage is reviewed only for abuse of discretion." *In re A.R.A.*, 373 N.C. 190, 199 (2019). "[A]buse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *Id.* (alteration in original) (quoting *In re T.L.H.*, 368 N.C. 101, 107 (2015)).

B. Neglect

¶ 14 **[1]** The trial court concluded that a ground existed to terminate respondent's parental rights to Carl for neglect under N.C.G.S. § 7B-1111(a)(1). The Juvenile Code authorizes the trial court to terminate parental rights

if "[t]he parent has abused or neglected the juvenile" as defined in N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is defined, in pertinent part, as a juvenile "whose parent . . . [d]oes not provide proper care, supervision, or discipline . . . [or c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2021). "[I]f the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent." *In re D.L.W.*, 368 N.C. 835, 843 (2016). "A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re M.A.*, 374 N.C. 865, 870 (2020) (cleaned up).

¶ 15 Respondent asserts that the trial court had no foundation for finding past neglect in finding of fact one—that "[respondent] has neglected the juvenile." According to respondent, the trial court could not have found past neglect when there was no evidence that respondent had custody of Carl in the past or was responsible for any neglect Carl experienced. Respondent argues that the trial court wrongly considered respondent's incompletion of his case plan as evidence of past neglect. Without a finding of past neglect, respondent further contends that the trial court could not have relied on the incompletion of his case plan to determine that there was a likelihood of future neglect.

¶ 16 This Court has long recognized that "evidence of neglect by a parent prior to losing custody of a child—including an adjudication of such neglect—is admissible in subsequent proceedings to terminate parental rights." *In re Ballard*, 311 N.C. 708, 715 (1984). In subsequent cases, we clarified that "[i]t is . . . not necessary that the parent whose rights are subject to termination be responsible for the prior adjudication of neglect." *In re J.M.J.-J.*, 374 N.C. 553, 565 (2020). Here, there was a prior adjudication of neglect. The trial court both took judicial notice of this prior adjudication of neglect and admitted it into evidence. Respondent never objected, either to the original adjudication or to its admission into evidence. Accordingly, the trial court did not err in finding past neglect in this case.

¶ 17 Outside of arguing that a trial court cannot determine that there is a likelihood of future neglect without first finding that the respondent himself neglected the child in the past, respondent does not otherwise challenge the trial court's determination in this case that there was a "substantial probability of a repetition of neglect." Having overruled respondent's arguments concerning past neglect, there remains no other challenge to the trial court's determination that there was a likelihood

of future neglect. Therefore, we affirm the trial court's adjudication that the ground of neglect existed in this case.

C. Best Interests

¶ 18 **[2]** At the dispositional stage of a termination proceeding, the trial court determines whether terminating the parent's rights is in the child's best interests. N.C.G.S. § 7B-1110(a). "The [trial] court may consider any evidence, including hearsay evidence as defined in [N.C.]G.S. [§] 8C-1, Rule 801, that the [trial] court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile." *Id.*

¶ 19 Additionally, the trial court must

> consider the following criteria and make written findings regarding the following that are relevant:
>
> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

Id. Although the statute requires the trial court to consider each of the statutory factors, the trial court is only required to make written findings regarding those factors that are relevant. *In re A.R.A.*, 373 N.C. at 199. A factor is relevant if there is conflicting evidence concerning that factor. *Id.* If supported by the evidence received during the termination hearing or not specifically challenged on appeal, the trial court's dispositional findings are binding on appeal. *In re S.C.C.*, 379 N.C. 303, 2021-NCSC-144, ¶ 22.

¶ 20 Respondent argues that the trial court abused its discretion in terminating his parental rights because it failed to make findings concerning all of the factors relevant to Carl's best interests; specifically, a finding regarding respondent's bond with Carl pursuant to N.C.G.S. § 7B-1110(a)(4). Respondent argues that there was conflicting evidence in this case concerning the bond between respondent and Carl.

¶ 21 Here, the trial court explicitly found that "[respondent] obviously loves [Carl]." This finding shows that the trial court considered respondent's bond with Carl. Moreover, this finding was made in the context of the trial court considering other relevant facts. The trial court found that "[Carl] would benefit from the stability and love of a permanent family. While [respondent] obviously loves [Carl], he is not in a position to meet [Carl's] needs in a safe, nurturing, and stable environment." This Court has previously held that the trial court adequately addresses the parent-child bond when it finds "that any previous bond or relationship with the [respondent parent i]s outweighed by [the child's] need for permanence." *In re A.R.A.*, 373 N.C. at 200. Here, the trial court found that Carl had a "very" strong bond with his foster parents, having spent most of his life with them. These findings reflect that the trial court considered Carl's bond with his father, and the trial court did not abuse its discretion in determining it was in Carl's best interests to terminate respondent's parental rights.

III. Conclusion

¶ 22 The trial court did not err when it adjudicated that a ground existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1). Nor did the trial court abuse its discretion when it determined that the termination of respondent's parental rights was in Carl's best interests. Accordingly, we affirm the order terminating respondent's parental rights.

AFFIRMED.

IN RE D.D.M.

[380 N.C. 716, 2022-NCSC-34]

IN THE MATTER OF D.D.M.

No. 249A21

Filed 18 March 2022

Termination of Parental Rights—grounds for termination—failure to make reasonable progress—medical neglect of child—parent's untreated mental illness

The trial court properly terminated respondent-mother's rights in her son for failure to make reasonable progress to correct the conditions leading to the child's removal (N.C.G.S. § 7B-1111(a)(2)), which mainly consisted of respondent-mother's failure to seek necessary medical care for the child, who was born prematurely with a heart defect and severe lung problems. Respondent-mother did not comply with treatment recommendations for her various mental health issues, including bipolar disorder, despite receiving a psychological evaluation (which she had continually put off completing for two years) confirming the detrimental effect that these issues had on her ability to attend to her son's medical needs. Further, the court did not impermissibly terminate respondent-mother's rights on account of her poverty where social workers had made several efforts throughout the case to help respondent-mother complete her case plan despite her insufficient finances.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 27 May 2021 by Judge Clifton H. Smith in District Court, Catawba County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Maranda W. Stevens for petitioner-appellee Catawba County Department of Social Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Richard Croutharmel for respondent-appellant mother.

EARLS, Justice.

¶ 1 Respondent-mother appeals from the trial court's order terminating her parental rights to her minor child D.D.M. (Damion).[1] She argues that the trial court committed reversible error in concluding that grounds existed to terminate her parental rights based on neglect and willful failure to make reasonable progress in correcting the conditions that led to removal under N.C.G.S. § 7B-1111(a)(1) and N.C.G.S. § 7B-1111(a)(2). After careful review of the record and consideration of the briefs of counsel, we affirm the trial court's order terminating respondent-mother's parental rights.

I. Factual and Procedural Background

¶ 2 Damion was born to respondent-mother on 14 August 2016 in Mecklenburg County. Damion was born at thirty-five weeks gestation with a heart defect and lung problems that required multiple corrective surgeries and resulted in Damion's extended need for oxygen and his intolerance of oral feedings, which required him to have a feeding tube. In October 2016, the Mecklenburg County Department of Social Services (MCDSS) received a child protective services report alleging that Damion was suffering from medical neglect under the care and custody of respondent-mother, as respondent-mother was allegedly not meeting his needs during his hospitalization and there had been an altercation between respondent-mother and Damion's father at the hospital. Hospital staff first expressed concerns about respondent-mother's ability to care for Damion upon his release from the hospital in November 2016 following his birth. After Damion's release from the hospital, respondent-mother was inconsistent with Damion's medical care. He missed multiple appointments with his various medical providers and missed in-home services including nursing and occupational therapy. On 8 December 2016, MCDSS received another child protective services report alleging respondent-mother's sustained medical neglect of Damion. The allegations in the report mirrored those that were raised in the October report.

¶ 3 In February 2017, the case was transferred to family in-home services through the Catawba County Department of Social Services (CCDSS) when respondent-mother relocated to Hickory, North Carolina. Special services were instituted to assist respondent-mother with Damion's care, and despite having access to these services, respondent-mother continued to be inconsistent in meeting Damion's medical needs. Damion's

1. This is a pseudonym used to protect the juvenile's identity. The father's parental rights to Damion were also terminated, but he did not participate in this appeal.

condition did not improve. On 22 June 2017, respondent-mother delayed bringing Damion to the hospital for fifteen hours after she was told by healthcare providers that he needed to be seen immediately because his feeding tube was dislodged following an altercation between respondent-mother and Damion's grandmother. When Damion was admitted to the hospital, his blood sugar was extremely low because he had not received any nourishment for approximately fifteen hours. Respondent-mother's delay in taking Damion to the hospital placed him at risk of a seizure, and when he was finally dropped off for admittance, medical providers did not see respondent-mother again until Damion was ready to be discharged seven days later.

¶ 4 On or about 12 July 2017, Damion's pediatrician contacted the hospital where he had received care and expressed continued concerns regarding his weight loss. Damion was immediately referred to the emergency department for evaluation, and he was ultimately admitted to an inpatient unit. Upon his readmission to the hospital, Damion had lost considerable weight from his discharge weight on 29 June 2017. As had been the case in June, no family was present to accompany Damion or provide physicians with his medical history, nor was respondent-mother present to receive education about how to properly care for Damion's medical needs. Damion's medical providers attributed his limited progress to respondent-mother's inability to appropriately meet his healthcare needs and they also raised concerns that respondent-mother suffered from untreated mental health diagnoses. While hospitalized, Damion's weight improved. Medical providers ultimately concluded that Damion's ongoing weight loss and lack of weight gain was related to the poor care that he had been receiving while in respondent-mother's home. Medical providers determined that Damion could not be safely released to respondent-mother following his readmission to the hospital in July.

¶ 5 On 27 July 2017, CCDSS filed a petition alleging that Damion was a neglected and dependent juvenile. The District Court, Catawba County granted non-secure custody of Damion to CCDSS on 28 July 2017. Thereafter, Damion was placed in a foster home where he received proper medical care, began to steadily gain weight, and caught up with age-appropriate developmental milestones. Meanwhile, respondent-mother failed to follow through with a mental health evaluation and treatment, stormed out of a scheduled appointment with a counselor after she did not receive medication, and obstructed efforts made by social services to obtain her signature for a case plan for Damion. Between the filing of the petition and the adjudication hearing in March,

April, and May of 2018, respondent-mother had exercised only sporadic visitation with Damion and attended just seven of the thirty visits that were made available to her after Damion was placed in foster care.

¶ 6 After a hearing on 30 May 2018, Damion was adjudicated a neglected and dependent juvenile. The trial court awarded CCDSS legal custody of Damion and respondent-mother was allowed supervised visitation with him for four hours per month. The trial court also ordered respondent-mother to enter into and comply with a case plan for reunification purposes. The trial court ordered that respondent-mother:

> a. Complete comprehensive medical training to meet the medical needs of her infant son;
> b. Complete a full psychological evaluation and follow recommendations;
> c. Provide and maintain stable housing;
> d. Maintain employment; and
> e. Consistently show the capacity to attend all scheduled appointments and meet all medical needs of her minor child.

Respondent-mother was also ordered to provide the court at the next hearing with evidence of efforts she had made to improve her transportation situation. Social workers continued to make efforts to help respondent-mother comply with her case plan. By the next hearing date on 17 September 2018, respondent-mother had only visited with Damion three times, despite the social worker's efforts to arrange transportation for the visits.

¶ 7 Over the next year, from October 2018 to October 2019, the trial court continued to enter permanency-planning orders as to Damion with the same case plan requirements. Between 2018 and 2019, the trial court found that overall, respondent-mother failed to make reasonable progress on correcting the conditions that led to Damion's removal, and that she did not follow through on complying with many of the requirements of her case plan.

¶ 8 On 17 December 2019, CCDSS moved to terminate respondent-mother's parental rights to Damion for neglect pursuant to N.C.G.S. § 7B-1111(a)(1), failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2), and failure to pay a reasonable portion of Damion's cost of care pursuant to N.C.G.S. § 7B-1111 (a)(3). After a hearing on the motion, the trial court concluded that grounds existed to terminate respondent-mother's parental rights to Damion under N.C.G.S.

§ 7B-1111(a)(1) and (a)(2) and determined that termination was in Damion's best interests. Respondent-mother appeals.

II. Analysis

¶ 9 On appeal, respondent-mother challenges the trial court's adjudication that grounds existed to terminate her parental rights for willful failure to make reasonable progress to correct the conditions that led to Damion's removal. Our standard of review is well-established:

> When reviewing the trial court's adjudication of grounds for termination, we examine whether the court's findings of fact are supported by clear, cogent[,] and convincing evidence and whether the findings support the conclusions of law. Any unchallenged findings are deemed supported by competent evidence and are binding on appeal. The trial court's conclusions of law are reviewed de novo.

In re Z.G.J., 378 N.C. 500, 2021-NCSC-102, ¶ 24 (cleaned up). The trial court's findings of fact that are supported by clear, cogent, and convincing evidence are deemed conclusive even when some evidence supports contrary findings. *In re Helms*, 127 N.C. App. 505, 511 (1997).

¶ 10 Here, the trial court concluded that respondent-mother willfully left Damion in foster care or a placement outside the home for more than twelve months without showing to the court's satisfaction that she made reasonable progress to rectify the conditions that led to his removal under N.C.G.S. § 7B-1111(a)(2). Respondent-mother does not dispute adjudicatory findings of fact 1 through 23. Those findings specify the ways that respondent-mother failed to make reasonable progress on correcting the conditions which led to Damion's removal during the forty-six months that he spent in foster care before her parental rights were terminated. Among other things, respondent-mother was specifically ordered to complete a full psychological evaluation and follow any recommendations, which may have aided in her capacity to adequately manage Damion's extensive and serious medical needs.

¶ 11 After respondent-mother completed a mental health assessment, she was diagnosed with adjustment disorders, including mixed anxiety and depressed mood. Consequently, respondent-mother's evaluating clinician recommended that she participate in therapy up to two times per week, submit to a psychiatric evaluation, and obtain crisis services to reduce the risk of harm to herself and others. Respondent-mother failed to follow through with the recommended outpatient therapy and did not

obtain the recommended psychiatric evaluation until almost two years after Damion was placed into CCDSS's custody. After respondent-mother finally completed the court-ordered evaluation, which resulted in a diagnosis of bipolar I disorder, her mental illness remained untreated. Respondent-mother's evaluating clinician, Dr. Jennifer Cappelletty, emphasized that respondent-mother's "untreated mental illness has contributed to her overall instability, poor judgment, unhealthy interpersonal relationships, and emotional dysregulation that have negatively impacted her capacity to effectively parent her children."

¶ 12 Throughout the history of this case respondent-mother's untreated mental health disorders caused Damion's doctors to be concerned that her illnesses contributed to her inability to properly attend to Damion's medical needs, and ultimately, respondent-mother's mental health challenges led to Damion's removal for neglect. The undisputed findings of fact in the trial court's order are based on the clear, cogent, and convincing evidence that respondent-mother failed to obtain treatment for her mental illness even though she received a psychiatric evaluation confirming the detrimental effect of her illness on her parenting abilities and recommending that she receive treatment. Respondent-mother's failure in this regard ultimately prevented her from making reasonable progress under the circumstances to correct the conditions which led to Damion's removal within the meaning of N.C.G.S. § 7B-1111(a)(2). Because respondent-mother does not contest these findings of fact on appeal, they are deemed to be supported by sufficient evidence. *In re Clark*, 159 N.C. App. 75, n.5 (2003) (citing *In re Caldwell*, 75 N.C. App. 299, 301 (1985)).

¶ 13 Respondent-mother argues that the trial court impermissibly terminated her parental rights based on N.C.G.S. § 7B-1111(a)(2) because it failed to consider the extent to which her inability to care for Damion was due to her being impoverished. The applicable statute requires that "[n]o parental rights, however, shall be terminated for the sole reason that the parents are unable to care for the juvenile on account of their poverty." N.C.G.S. § 7B-1111(a)(2) (2021). Here, it was respondent-mother's failure to make reasonable efforts to complete her case plan, rather than her lack of financial resources, that was the basis of the trial court's order. For example, social workers who attempted to engage with respondent-mother consistently offered her transportation to Damion's medical appointments and visitations, and when respondent-mother moved to Durham County she was given the option of participating in virtual visitations if in-person visitations became infeasible. Additionally, the trial court found that respondent-mother did

not demonstrate the sustained behavioral change that was necessary for Damion to be safely returned to her care.

¶ 14 Furthermore, respondent-mother had difficulty maintaining consistent employment while Damion was placed elsewhere. She quit her job at Taco Bell in January 2019 and then began working at an assisted living facility in May 2019. But at the time of the trial court's order terminating her parental rights, respondent-mother had been unemployed since the birth of her youngest child in or around March 2020. On balance, the trial court's findings demonstrate that respondent-mother could have sought to comply with the requirements of her case plan even while experiencing otherwise insufficient monetary resources.

¶ 15 We therefore hold that the trial court properly determined grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(2). "[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights," and it is not necessary to address the sufficiency of the trial court's conclusions of law or findings of fact relative to any other ground. *In re E.H.P.*, 372 N.C. 388, 395 (2019); *see also In re T.N.H.*, 372 N.C. 403, 413 (2019). Thus, we decline to reach the question of whether the trial court properly terminated respondent-mother's parental rights for neglect pursuant to N.C.G.S. § 7B-1111(a)(1).

III. Conclusion

¶ 16 We conclude that the trial court did not err in adjudicating the existence of grounds for termination of respondent-mother's parental rights in Damion. Respondent-mother does not challenge the trial court's determination that termination of her parental rights was in Damion's best interests. We therefore hold that the trial court based its findings of fact and conclusions of law on sufficient evidence and appropriately terminated respondent-mother's parental rights under N.C.G.S. § 7B-1111(a)(2) and that termination was in Damion's best interest. In light of the foregoing, the order terminating respondent-mother's parental rights must be affirmed.

AFFIRMED.

IN RE D.I.L.

[380 N.C. 723, 2022-NCSC-35]

IN THE MATTER OF D.I.L.

No. 268A21

Filed 18 March 2022

Termination of Parental Rights—grounds for termination—neglect—likelihood of repetition of neglect—parental fitness at time of proceeding

In a private termination of parental rights matter, where petitioners had obtained custody of the child pursuant to a civil custody order, the trial court properly terminated the father's parental rights in the child on grounds of neglect (N.C.G.S. § 7B-1111(a)(1)). Although the father could not regain custody under the civil order without a substantial change in his parenting skills and ability to care for the child, the court did not err in determining that a substantial likelihood of repetition of neglect existed where, under the applicable statutes, that determination depends not on the parent's fitness to regain custody of the child but rather on the parent's fitness to care for the child at the time of the termination proceeding.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 1 June 2021 by Judge David V. Byrd in District Court, Yadkin County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

J. Clark Fischer for petitioner-appellees.

No brief for Guardian ad Litem.

Peter Wood for respondent-appellant father.

BARRINGER, Justice.

¶ 1 Respondent appeals from the order terminating his parental rights to his minor child D.I.L. (Daniel).[1] The trial court concluded that both

1. A pseudonym is used in this opinion to protect the juvenile's identity and for ease of reading.

respondent and Daniel's biological mother (mother)[2] had neglected Daniel and that there was a substantial likelihood of repetition of neglect of Daniel by respondent and the mother. Hence, the trial court found that the ground of neglect pursuant to N.C.G.S. § 7B-1111(a)(1) existed to terminate respondent's parental rights. The trial court further concluded that it was in the best interests of Daniel that respondent's and the mother's parental rights be terminated and thus terminated their parental rights.

¶ 2 On appeal, respondent challenges the trial court's determination that there was a substantial likelihood of repetition of neglect if Daniel was returned to respondent's care. Respondent contends this determination was erroneous because petitioners had custody pursuant to a civil custody order, rendering respondent unable to obtain custody without a substantial change in his ability to care for Daniel and his parenting skills. Since we conclude that this argument has no merit, we affirm the trial court's order terminating the parental rights of respondent to Daniel.

I. Background

¶ 3 When Daniel resided with his mother and respondent, Daniel witnessed them sticking themselves with needles and selling drugs. They also instructed Daniel to obtain their "happy medicine," which involved needles. Respondent overdosed once, necessitating emergency medical services, and had an ongoing drinking problem. As respondent and the mother passed out frequently from their substance use, Daniel's older half-brother had to feed Daniel. The home was dirty and infested with roaches.

¶ 4 Eventually, the Wilkes County Department of Social Services (DSS) became involved with the family because of illegal drug activity in respondent and the mother's home. Respondent and the mother approached petitioners about taking care of Daniel's older half-brother, and petitioners came to learn of Daniel's situation through DSS.

¶ 5 Thereafter, on 24 February 2016, petitioners took Daniel and Daniel's half-brother into their care. Daniel arrived with educational deficits for his age, food insecurity, clothing infested with roaches and contaminated by intravenous needles, unprescribed medicine, and fears of corporal punishment if he was caught lying.

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2. Daniel's biological mother is not a party to this appeal.

¶ 6 DSS subsequently filed a petition alleging that Daniel was a neglected juvenile. The trial court adjudicated Daniel a neglected juvenile by order entered on 20 July 2016. Thereafter, on 7 September 2016, in a civil custody proceeding, the trial court granted petitioners primary legal and physical custody of Daniel. The order provided respondent with monthly supervised visitation.

¶ 7 Respondent initially utilized some of his visitation rights but did not interact with Daniel very much during the visits. Respondent visited with Daniel approximately eight times between 2016 and 2017. During this time period, respondent provided Daniel a bike, some clothes, and some toys. However, at a visit in 2016, respondent arrived high and could barely walk or talk, and at a visit in 2017, respondent smelled of alcohol and drank from a container in a brown bag. The visit in August 2017 was the last time respondent visited with Daniel or petitioners. Respondent did not contact petitioners to arrange subsequent visits and ceased calling petitioners. Respondent also had not written or sent any cards to Daniel since 2015.

¶ 8 Respondent filed a motion to modify custody on 17 September 2018. On 2 October 2018, petitioners filed a petition to terminate respondent's and the mother's parental rights, alleging neglect and willful abandonment pursuant to N.C.G.S. § 7B-1111(a)(1) and (a)(7). Petitioners subsequently amended the petition on 8 April 2019 to attach the custody orders referenced in the petition.

¶ 9 A termination-of-parental-rights hearing occurred over the course of three days. At the time, respondent was on probation. Respondent previously had been convicted of driving while impaired and one or more drug offenses, including maintaining a dwelling for purposes of controlled substances. Respondent was employed, had health insurance, resided in a two-bedroom mobile home, and paid child support for one of his children. However, he had not paid child support for Daniel (or any of his other children) or added Daniel to his health insurance plan despite its availability. Respondent acknowledged that he chose not to pay child support for Daniel's care.

¶ 10 The trial court found that a ground existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) and that termination was in Daniel's best interests. Accordingly, the trial court terminated respondent's parental rights. Respondent appealed.

II. Substantial Likelihood of Repetition of Neglect

¶ 11 On appeal, respondent argues that the trial court committed prejudicial error for one reason: the trial court found a substantial likelihood

of repetition of neglect when there was no chance for respondent to obtain custody of Daniel unless respondent showed a substantial change in his parenting skills and ability to care for Daniel. Respondent argues that this showing would be required for him to obtain custody because petitioners already had custody pursuant to a civil custody order.

¶ 12 Petitioners contend that the existence of a civil custody order does not bar a determination of a substantial likelihood of repetition of neglect. Petitioners argue that this Court's decision in *In re B.T.J.*, 377 N.C. 18, 2021-NCSC-23, directs the trial court to assess the fitness of the parent to care for the child *at the time of the termination-of-parental-rights proceeding* when determining a probability of repetition of neglect. Thus, according to petitioners, the custody order is irrelevant. Further, petitioners raise that respondent's contention ignores the definitions of neglect and neglected juvenile under the applicable statutes, N.C.G.S. § 7B-1111(a)(1) and N.C.G.S. § 7B-101(15).

¶ 13 We agree that respondent's argument is contrary to this Court's prior decisions. For several decades, this Court has recognized that in addition to evidence of prior neglect by the parents prior to losing custody of the juvenile, including an adjudication of neglect,

> [t]he trial court must also consider any evidence of changed conditions in light of the evidence of prior neglect and the probability of a repetition of neglect. The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*.

In re Ballard, 311 N.C. 708, 715 (1984) (cleaned up); *see also In re B.T.J.*, ¶ 13.

¶ 14 Further, the applicable statutes do not deem the fitness necessary for a parent to regain custody of a child relevant to a determination of neglect under N.C.G.S. § 7B-1111(a)(1). Pursuant to N.C.G.S. § 7B-1111(a)(1), a trial court "may terminate . . . parental rights upon a finding [that] . . . [t]he parent *has* . . . neglected the juvenile." N.C.G.S. § 7B-1111(a) (2021) (emphasis added). And subsection 7B-101(15) of the General Statutes of North Carolina defines neglected juvenile to include "[a]ny juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker *does* not provide proper care, supervision, or discipline." N.C.G.S. § 7B-101(15) (2019) (emphasis added); *see also* N.C.G.S. § 7B-101(15) (2021) (defining neglected juvenile as "[a]ny juvenile less than 18 years of age . . . whose parent, guardian, custodian, or caretaker *does* any of the following: . . . [d]oes not provide proper care,

supervision, or discipline" (emphasis added)). Notably, the applicable statutes use the present or present perfect tense—not the future—and make no mention of the fitness necessary for a parent to regain custody of his or her child.

¶ 15 Thus, we conclude that the trial court did not err.

III. Conclusion

¶ 16 Having addressed the one issue respondent identified on appeal[3] —whether "[t]he trial court committed prejudicial error by finding a probability of future neglect when there was no risk of future neglect because Daniel could not be returned to [respondent] under the civil custody order unless a court found there was no risk to the child"—and having found no merit to the argument, we affirm the trial court's order terminating respondent's parental rights.

AFFIRMED.

3. Respondent stated in his brief that he "dispute[d] conclusions of law six and seven." However, respondent offered no argument or reason to support this statement other than the one issue that he identified on appeal, which we hold has no merit. Thus, we have addressed the issue presented to the Court. All other issues are deemed abandoned. *See* N.C. R. App. P. 28(a), (b)(6).

IN RE H.R.S.

[380 N.C. 728, 2022-NCSC-36]

IN THE MATTER OF H.R.S.

No. 227A21

Filed 18 March 2022

Termination of Parental Rights—best interests of the child—placement with foster mother—consideration of relatives

The trial court did not abuse its discretion by concluding that termination of a mother's parental rights was in her daughter's best interests and by placing the child with her nonrelative foster mother. The court's unchallenged findings addressed statutory dispositional factors, including that the child had an extremely strong bond with the foster mother and that there was a high likelihood of adoption, and gave relevant consideration to family members who were identified late in the proceedings as being available for placement. The trial court was not required to prioritize placement with a relative, and its findings indicated an appropriate balancing of competing goals.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from orders entered on 28 April 2021 by Judge Thomas B. Langan in District Court, Stokes County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Jennifer Oakley Michaud for petitioner-appellee Stokes County Department of Social Services.

James N. Freeman Jr. for appellee Guardian ad Litem.

Robert W. Ewing for respondent-appellant mother.

NEWBY, Chief Justice.

IN RE H.R.S.

[380 N.C. 728, 2022-NCSC-36]

¶ 1 Respondent-mother appeals from the trial court's orders terminating her parental rights[1] to H.R.S. (Heather).[2] After careful review, we affirm the trial court's orders.

¶ 2 Heather was born on 15 August 2017 in Forsyth County. On 10 April 2019, the Stokes County Department of Social Services (DSS) received a child protective services report regarding Heather due to a domestic violence incident and concerns regarding respondent's substance abuse. At the time, respondent and Heather lived in the home of Heather's maternal grandparents with several relatives. In the days leading up to the incident, respondent "exhibited signs of hallucinations"—claiming "that she was speaking with a deceased individual"—and also "exhibited paranoia that those in the home were going to injure her." On 10 April 2019, respondent came home with Heather and appeared to be under the influence of drugs or alcohol. The maternal great-grandmother came outside and asked respondent to leave. Ignoring the maternal great-grandmother, respondent went inside and stabbed the maternal grandfather repeatedly. Respondent was arrested and charged with attempted first-degree murder and felony assault with a deadly weapon with intent to kill inflicting serious injury.

¶ 3 That same day, the social worker assigned to Heather's case learned that respondent did not want Heather to remain in the home with the maternal grandparents. Respondent wanted Heather to be placed with Heather's paternal grandparents. After an investigation, however, the social worker determined that Heather's paternal grandparents could not serve as a placement due to their criminal history. That day, the social worker placed Heather with her maternal uncle; Heather and her maternal uncle were to reside at a neighbor's home.

¶ 4 On 11 April 2019, the social worker contacted Heather's father, who was incarcerated at the Forsyth County Jail.[3] Heather's father was

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1. Respondent also noticed an appeal from the trial court's permanency planning order resulting from a hearing on 21 January 2021, but she does not present any argument as to that order in her brief. Thus, this argument is waived. *See In re E.S.*, 378 N.C. 8, 2021-NCSC-72, ¶ 19 (holding that an argument was waived under N.C. R. App. P. 28(a) because the respondent did not present or discuss that argument in the brief).

2. A pseudonym is used in this opinion to protect the juvenile's identity and for ease of reading.

3. The trial court also terminated the parental rights of Heather's father, but he did not appeal the trial court's order. Thus, we only recount the actions of Heather's father as relevant to respondent's arguments.

concerned because he was "aware of [respondent] and [Heather's maternal uncle] using [m]ethamphetamines together at the neighbor's home." DSS then filed a juvenile petition alleging that Heather was a neglected juvenile because she "live[d] in an environment injurious to [her] welfare."[4] The trial court entered a nonsecure custody order which gave custody of Heather to DSS and authorized her placement with a foster parent. Thus, Heather was removed from the care of her maternal uncle on 11 April 2019 and placed in a foster home. On 16 April 2019, the trial court ordered DSS to perform a kinship assessment on Heather's maternal great-aunt and great-uncle; Heather was placed with them on 22 April 2019.

¶ 5 Over the next month, DSS continued working with respondent's family to find an appropriate relative placement. The maternal grandparents "completed a home study in May [of 2019] and were in the process of being considered for placement." Heather's maternal grandfather ultimately refused to submit to a hair follicle test and told the social worker on 31 May 2019 that he and the maternal grandmother "wished to withdraw from consideration of their home as a potential placement." After a social worker requested that Heather's maternal uncle undergo a drug screen, he also withdrew from consideration the same day. As noted in a DSS court report filed on 29 July 2019,

> [d]uring the course of [31 May 2019], [Heather's] current placement provider was having chest pains and admitted into the hospital. They requested respite care for [Heather] over the weekend. The following Monday, [the social worker] took [Heather] to the pediatrician where she was diagnosed with the viral infection of hand[,] foo[t,] and mouth. [The social worker] . . . then traveled to [Heather's] maternal great[-]aunt and [great-]uncle's home to discuss [the] most recent decisions by [Heather's maternal uncle]. Both adults were visibly upset while expressing their love for [Heather] and wanting what is best for her. The placement providers were upfront and honest in the beginning [of the placement] about their inabilities to do this long term. [Heather's maternal great-aunt and great-uncle] were adamant they only wanted what was best for [Heather] and that being with a foster parent was in her best interest.

4. The juvenile petition also alleged that Heather was a dependent juvenile. DSS voluntarily dismissed the dependency allegation without prejudice on 25 July 2019.

Having already determined that Heather's paternal grandparents were not an appropriate placement, DSS returned Heather to her previous foster placement on 31 May 2019. Heather remained in this placement throughout the remainder of the proceedings.

¶ 6 While incarcerated, respondent was charged with assault on a government official and resisting a public officer and was placed on suicide watch. After the trial court held a hearing regarding the juvenile petition on 25 July 2019, the trial court found that Heather was a neglected juvenile because she "was exposed to substance abuse and therefore lived in an environment injurious to her welfare." The trial court set the permanent plan for Heather as reunification with her parents, with a concurrent plan of adoption. The trial court concluded that visitation with respondent was "not in [Heather]'s best interests, as [respondent] remain[ed] incarcerated." Moreover, the trial court ordered respondent to "enter into a case plan and comply with its terms." Respondent entered into her case plan on 30 January 2020. On 21 September 2019, respondent was convicted of assault on a government official and resisting a public officer. On 22 October 2019, respondent was convicted of attempted first-degree murder and assault with a deadly weapon with intent to kill inflicting serious injury. Respondent will remain in prison until at least October of 2023.

¶ 7 K.T.,[5] a cousin of Heather's father, and her husband J.T. became involved in the case in January of 2020. K.T. and J.T. live in Hagerstown, Maryland, in a three-bedroom ranch house on at least an acre of land. J.T. is a sergeant with the Maryland State Police; he is a shift commander responsible for other troopers. On 1 January 2020, several months after Heather was returned to her foster placement, K.T. and J.T. learned from a relative that Heather was in DSS custody; Heather's father did not initially inform them. That day, K.T. called DSS several times but was unable to make contact because DSS was closed. During January and February of 2020, K.T. and J.T. spoke with DSS employees on the phone and visited North Carolina. DSS informed K.T. and J.T. that DSS was not "seeking any placement with family outside the state because the primary goal was supposed to be reunification." After March of 2020, K.T. and J.T. did not speak with DSS again for several months. In May of 2020, while visiting North Carolina, K.T. spoke with Heather's father, who was "very optimistic that he was getting [Heather] back at that time."

¶ 8 After a review hearing on 16 July 2020, the trial court changed Heather's primary permanent plan to termination of parental rights

5. Initials are used for these relatives to further protect the juvenile's identity.

and adoption, with a secondary plan of reunification. DSS filed a motion to terminate respondent's parental rights on 17 September 2020 on the grounds of neglect, willfully leaving the juvenile in foster care while failing to make reasonable progress, and dependency. *See* N.C.G.S. § 7B-1111(a)(1), (2), and (6) (2021). On 22 December 2020, Heather's father filed a "Motion for Expedited Inquiry of Placement" which requested the trial court to "[o]rder DSS to complete an expedited inquiry into placement with" Heather's paternal grandmother or K.T. In its order denying the father's motion, the trial court found:

> 6. The juvenile has never met [K.T.], who resides in Maryland. Placement with [Heather's paternal grandmother] was evaluated and determined to be against [Heather's] best interests, earlier in the case.
>
> . . . .
>
> 8. [K.T.] lives in Maryland, and an Interstate Compact Home Study would be required to investigate her suitability for placement. Because of the affinity between [K.T.] and the juvenile, the case does not qualify for an expedited home study.
>
> . . . .
>
> 12. [K.T. and J.T.] did not contact the Stokes [County] Department of Social Services prior to the initial disposition of the case. The father contacted the Stokes [County] Department of Social Services regarding [K.T. and J.T. on] 12/9/2020 for the first time.

The trial court therefore concluded that "[i]t is contrary to the best interests of the juvenile to be taken from her foster home, where she has lived for 20 months, and placed with relatives." Thus, the trial court denied the father's motion.

¶ 9 The motion to terminate respondent's parental rights was heard on 10 February 2021 and 26 February 2021. In a written order entered on 28 April 2021, the trial court determined that grounds existed to terminate respondent's parental rights under N.C.G.S. § 7B-1111(a)(1) and (2). In a separate written order entered the same day, the trial court concluded it was in Heather's best interests to terminate respondent's parental rights. Accordingly, the trial court terminated respondent's parental rights. Respondent appeals.

¶ 10 A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2021); *In re Montgomery*, 311 N.C. 101, 110, 316 S.E.2d 246, 252 (1984). Respondent does not challenge the grounds for termination adjudicated by the trial court under N.C.G.S. § 7B-1111(a), nor does respondent challenge the findings of fact in the trial court's disposition order. Rather, respondent argues the trial court erred by concluding that terminating her parental rights was in Heather's best interests.

¶ 11 "A trial court's determination concerning whether termination of parental rights would be in a juvenile's best interests 'is reviewed solely for abuse of discretion.' " *In re S.D.C.*, 373 N.C. 285, 290, 837 S.E.2d 854, 858 (2020) (quoting *In re A.U.D.*, 373 N.C. 3, 6, 832 S.E.2d 698, 700 (2019)). "Under this standard, we defer to the trial court's decision unless it is 'manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision.' " *In re A.K.O.*, 375 N.C. 698, 701, 850 S.E.2d 891, 894 (2020) (quoting *In re Z.A.M.*, 374 N.C. 88, 100, 839 S.E.2d 792, 800 (2020)). When determining whether termination of a parent's rights is in a child's best interests,

> [t]he court may consider any evidence, including hearsay evidence as defined in [N.C.]G.S. [§] 8C-1, Rule 801 [(2021)], that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:
>
> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent . . . .
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a). This Court is "bound by all uncontested dispositional findings." *In re E.F.*, 375 N.C. 88, 91, 846 S.E.2d 630, 632 (2020) (citing *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019)).

¶ 12 In its disposition order, the trial court found the following facts relating to Heather's bond with her foster mother:

> 5. The juvenile's current placement is pre-adoptive, and as such the likelihood of adoption of the juvenile is exceptionally high. [Heather's foster mother] has expressed an interest and a desire in adopting the juvenile.
>
> 6. The juvenile has been in the custody of Stokes County DSS for six-hundred and eighty-six days as of today's hearing.
>
> 7. That the juvenile has been in the care of her current foster mother . . . for six-hundred [and] fifty-seven days.
>
> 8. That the juvenile had behavioral issues when she came into care. She would not hug and refused to be hugged. She banged her head [and] would stick her fingers in her ears. She has since become an affectionate a[nd] loving child who is excited and happy.
>
> 9. In May of 2019, the juvenile cried and was not able to look at the social worker but is now excited to see her.
>
> 10. That the juvenile is now verbal and has friends within her community in North Carolina.
>
> 11. A strong, loving bond exists between [the foster mother] and the juvenile. The juvenile calls [her foster mother], "Mommy", and turns to [her foster mother] when the juvenile is upset. This bond is of a very high quality.

Moreover, the trial court found the following facts as to K.T. and J.T.:

> 30. That [K.T. and J.T.] have the ability to effectuate a relationship between the minor child's half-sibling and other biological family members of the minor child that reside in Maryland.
>
> 31. That [K.T. and J.T.] are willing to provide a permanent placement for the minor child, including adoption.

> 32. That but for the bond between the juvenile and [the foster mother], [K.T. and J.T.] would make suitable caretakers and custodians of the juvenile.
>
> . . . .
>
> 39. That the father indicated to [K.T. and J.T.] as late as the summer of 2020 that it was likely or that he hoped for reunification with the juvenile.
>
> 40. That the father did not contact [K.T. and J.T.] until later in the year of 2020 to see if they would be willing to be considered for placement of the juvenile.
>
> 41. That counsel for the father proffered [K.T. and J.T.] . . . as a placement option in December of 2020.
>
> 42. During the time the underlying abuse, neglect, [and] dependency case was pending, [K.T. and J.T.] never asked to visit the juvenile and have still never met the juvenile.
>
> 43. That the father knew as early as May of 2020 that [K.T. and J.T.] were willing to offer themselves as placement options.
>
> . . . .
>
> 46. That the father's lack of participation in this case resulted in not communicating the interest of [K.T. and J.T.] as a placement option prior to at the earliest November of 2020.

Respondent does not challenge these dispositional findings; thus, they are binding on appeal. *In re A.K.O.*, 375 N.C. at 702, 850 S.E.2d at 894 ("Dispositional findings not challenged by respondents are binding on appeal.").

¶ 13 Respondent contends that "DSS failed to inform the trial court that there were relatives who were willing and able to provide for Heather's proper care and supervision." Thus, respondent argues, "[t]he trial court was not able to consider the paternal relative[s] as Heather's 'first' placement as required by . . . N.C.[G.S.] § 7B-903(a1)." Moreover, respondent contends that the trial court's factual findings did not support

the conclusion that terminating respondent's parental rights was in Heather's best interests. This is especially so, respondent contends, because the trial court also found that Heather had family members who could be a suitable placement.

¶ 14 During the initial abuse, neglect, and dependency stage of a juvenile proceeding, the Juvenile Code requires a trial court "to consider whether a relative placement is available." *In re S.D.C.*, 373 N.C. at 290, 837 S.E.2d at 858; *see also* N.C.G.S. § 7B-900 (2021) ("If possible, the *initial approach* should involve working with the juvenile and the juvenile's family in their own home . . . ." (emphasis added)); N.C.G.S. § 7B-903(a1) (2021) ("In placing a juvenile in out of home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home."). Under N.C.G.S. § 7B-1110(a), however, "the trial court is not expressly directed to consider the availability of a relative placement in the course of deciding a termination of parental rights proceeding." *In re K.A.M.A.*, 2021-NCSC-152, ¶ 14 (quoting *In re S.D.C.*, 373 N.C. at 290, 837 S.E.2d at 858). Rather, if the record contains evidence tending to show a relative can provide care for the juvenile, the trial court "may treat the availability of a relative placement as a 'relevant consideration' " under N.C.G.S. § 7B-1110(a)(6). *Id.* (quoting *In re S.D.C.*, 373 N.C. at 290, 837 S.E.2d at 858). Moreover, " 'the availability of a relative [placement] during the dispositional phase' . . . is not determinative." *In re C.A.D.*, 247 N.C. App. 552, 564, 786 S.E.2d 745, 752 (2016) (quoting *In re M.M.*, 200 N.C. App. 248, 258, 684 S.E.2d 463, 469 (2009)). In such a case, "the trial court should make findings of fact addressing 'the competing goals of (1) preserving the ties between the children and their biological relatives; and (2) achieving permanence for the children as offered by their prospective adoptive family.' " *In re S.D.C.*, 373 N.C. at 290, 837 S.E.2d at 858 (quoting *In re A.U.D.*, 373 N.C. at 12, 832 S.E.2d at 703–04).

¶ 15 Here the trial court appropriately balanced these competing goals. At the beginning of the case, in April and May of 2019, DSS attempted to place Heather with her various relatives. Early in the case, DSS determined that Heather's paternal grandparents would not be an appropriate placement due to their criminal history. On the day respondent stabbed Heather's maternal grandfather, Heather was initially placed with her maternal uncle. After Heather was removed from the care of her maternal uncle due to his suspected use of methamphetamines, Heather was briefly placed with her foster mother while DSS investigated other family members as placement options. Prioritizing relatives, DSS then

placed Heather with her maternal great-aunt and great-uncle, although this placement was only temporary. Heather's maternal great-aunt and great-uncle subsequently encountered health problems that prevented them from continuing to care for Heather. Moreover, the maternal uncle and the maternal grandparents withdrew from consideration as relative placements on 31 May 2019. Thus, Heather was returned to her foster mother that day. At no time during this initial portion of the case, when DSS was looking for relative placements, was DSS informed of K.T. and J.T. Rather, DSS was informed of K.T. and J.T. as a placement option in November of 2020 at the earliest, well after Heather was returned to the care of her foster mother.

¶ 16 Moreover, the trial court properly treated the availability of K.T. and J.T. as a "relevant consideration" under N.C.G.S. § 7B-1110(a)(6). The trial court found that K.T. and J.T. "would make suitable caretakers and custodians of the juvenile." The trial court also found, however, that Heather's likelihood of adoption by her foster mother was "exceptionally high" and that "[a] strong, loving bond exists between [the foster mother] and the juvenile," a bond that "is of a very high quality." The trial court further found that Heather "had behavioral issues when she came into care" and found that those issues improved while living with her foster mother. Thus, the trial court balanced the goal of preserving Heather's ties with her relatives against the goal of achieving permanence for Heather. The trial court was not required to prioritize placement with K.T. and J.T. Therefore, the trial court did not abuse its discretion by determining that termination of respondent's parental rights was in Heather's best interests. Accordingly, we affirm the trial court's orders.

AFFIRMED.

IN RE J.C.

[380 N.C. 738, 2022-NCSC-37]

IN THE MATTER OF J.C. AND D.C.

No. 166A21

Filed 18 March 2022

Termination of Parental Rights—standard of proof—clear, cogent, and convincing—not stated in open court or in written order—appropriate remedy

In a termination of parental rights proceeding, the trial court's failure to state that it was utilizing the standard of proof of clear, cogent, and convincing evidence, either orally in open court or in its written order terminating both parents' rights to their children—and in fact stating the wrong standard of proof in its order (preponderance of the evidence)—was in violation of N.C.G.S. § 7B-1109(f). Where the record evidence was not so clearly insufficient as to make further review futile, the termination order was reversed and the matter remanded for reconsideration under the correct standard of review.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 29 March 2021 by Judge Kristina Earwood in District Court, Swain County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Justin B. Greene for petitioner-appellee Swain County Department of Social Services.

Womble Bond Dickinson (US) LLP, by Jonathon D. Townsend and Theresa M. Sprain, for appellee Guardian ad Litem.

Edward Eldred for respondent-father.

J. Lee Gilliam for respondent-mother.

MORGAN, Justice.

¶ 1 Respondent-parents appeal from an order terminating their parental rights to two of their children: "Dylan," born on 15 February 2009

and "Julia," born on 23 September 2005.[1] Under our legal precedent, it is clear that the order filed by the trial court in this case contains an incorrect statement of the applicable standard of proof, leaving for this Court's resolution only the issue of the proper remedy for this error. After reviewing the pertinent precedent, we conclude that the trial court order must be reversed and that the case should be remanded to the trial court for further proceedings.

I. Factual and Procedural Background

¶ 2 Respondents are the parents of three children, including Dylan and Julia, who are the subjects of the termination of parental rights order under review in this matter. The Swain County Department of Social Services (DSS) became involved with respondents' family household and investigated it in the spring of 2015 and January 2016 based upon concerns regarding the sanitary conditions of the family home and the children's receipt of an appropriate education after the children were withdrawn from their schools. These case investigations were closed with no services recommended for respondents or their children. However, DSS became involved with respondents and their household again after concerns were registered about the welfare of the child of another family who began to reside in respondents' home. In early 2016, respondents allowed three minor siblings unrelated to respondents—"Ryan," "Charlotte," and "Ava"—to live in respondents' household in order to help those children's parents to improve their ability to care for their children. One of the parents was dealing with a substance abuse issue and the other parent was a registered sex offender. On 4 April 2016, Ryan, who at the time was four years of age, was admitted to a hospital emergency room with life-threatening, non-accidental injuries which required his transport to a pediatric intensive care unit. When brought to the hospital, Ryan was alleged to have been "unresponsive," with a temperature of 87 degrees, a pulse rate of 40, and to have been "covered with bruises, cuts and lesions." Ryan "was given Narcan for overdose symptoms[ ] and immediately responded to th[at] treatment." During various interactions and interviews which were conducted as part of the investigation which DSS undertook subsequent to Ryan's hospital admission, respondents' three children described a number of incidents which could be deemed to constitute physical assaults and sexual abuse

1. All children mentioned in this opinion are identified by pseudonyms to protect their privacy.

by respondents against all of the children who were residing in respondents' home: respondents' children, Ryan, and Ryan's siblings.[2]

¶ 3 As a result of Ryan's injuries and resulting condition, on 5 April 2016 DSS filed petitions alleging, *inter alia*, that Ryan was an abused juvenile and that Ryan, Ryan's two siblings and respondents' three children—including Dylan and Julia—were neglected juveniles. DSS also took custody of all six children who were living in respondents' home at the time. On 20 July 2017, the trial court entered an order which, *inter alia*,[3] adjudicated respondents' children as neglected juveniles. On 22 January 2018, the trial court entered an initial order of disposition which established various components of respondents' case plans with which they were to comply, relieved DSS of further efforts to reunify the children with respondents and continued the children's placement outside respondents' home. In November 2018, upon appeal by respondents, the Court of Appeals affirmed the adjudication order but reversed the disposition order in part, specifically to the extent that it relieved DSS of further reunification efforts and eliminated reunification from the children's permanent plan and remanded the matter to the trial court for further proceedings. *See In re D.C.*, 262 N.C. App. 372 (2018) (unpublished). Following a hearing upon remand in July 2019, the trial court entered a new disposition order setting the primary permanent plan as reunification with a secondary plan of adoption; conducted permanency planning hearings; and entered subsequent permanency planning orders. In December 2019, DSS requested that Julia's and Dylan's primary plans be changed to adoption. At a permanency planning hearing in January 2020, the trial court announced that it would change Julia's and Dylan's permanent plans to adoption.[4]

¶ 4 On 10 June 2020, DSS filed a petition to terminate respondents' parental rights to Dylan and Julia.[5] The petition advanced three grounds to support the termination of respondents' parental rights to these juveniles: neglect, a willful failure to make progress correcting removal

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2. Respondents were subsequently indicted for, *inter alia*, felony child abuse against Ryan.

3. The adjudication order also adjudicated Ryan as an abused and neglected juvenile and his siblings as neglected juveniles.

4. For unknown reasons, the written order formally making the change was not filed until 2 February 2021. In any event, the order was not appealed.

5. Respondents' third child was also the subject of a TPR petition, but that petition was dismissed by DSS prior to the hearing because the juvenile was expected to reach the age of eighteen before the conclusion of the matter.

conditions, and a willful failure to pay the costs of care. *See* N.C.G.S. § 7B-1111(a)(1), (2), (3) (2021). Among other contentions, the petition alleged that: (1) respondents' criminal charges remained pending; (2) respondents had not completed their case plans; (3) both children were diagnosed with post-traumatic stress disorder as a result of their time spent with respondents; and (4) the children's therapists recommended no contact between the children and respondents. DSS asked the trial court to find that grounds existed to terminate the parental rights of respondents "beyond a reasonable doubt."

¶ 5 Following a hearing on the petition for termination of parental rights on 2 February 2021, the trial court directed DSS to make findings of fact "based upon the evidence presented," and the trial court announced that it would find "grounds one and two, specifically neglect and traumas and foster care." At the end of the disposition phase of the proceedings, the trial court again directed DSS to make findings of fact "based upon the evidence presented" and the trial court announced that it would find "it is in the best of to terminate [sic] the parental rights of the respondents." The trial court did not state at any point during the hearing or during the trial court's announcement of its determination that grounds existed to terminate respondents' parental rights that it was employing the "clear, cogent, and convincing" standard of proof which applies in termination of parental rights proceedings. The trial court subsequently entered a written order on 29 March 2021 which terminated respondents' parental rights to Dylan and Julia. The trial court's written order included a statement that the trial court made its findings of fact "by a preponderance of the evidence." Respondents appeal.[6]

II. Analysis

¶ 6 The Juvenile Code in North Carolina mandates that a trial court's adjudicatory findings of fact in a termination of parental rights order "shall be based on clear, cogent, and convincing evidence." N.C.G.S. § 7B-1109(f) (2021); *see also In re B.L.H.*, 376 N.C. 118, 124 (2020). Clear, cogent, and convincing evidence is an intermediate standard of

6. Counsel for DSS filed a motion in this Court on 28 September 2021 seeking leave to file a motion to "correct" the termination of parental rights order at issue here by means of remand to the trial court for a "correction" of the statement regarding the trial court's standard of proof employed in making findings of fact. Counsel for DSS stated that, at the direction of the trial court, counsel drafted the judgment for termination of parental rights by "copying and pasting" passages from prior orders and thereby inadvertently included references in the trial court's order which stated that "preponderance of the evidence" was the standard of proof employed in these termination proceedings. This Court denied the DSS motion on 20 December 2021.

proof which is "greater than the preponderance of the evidence standard required in most civil cases." *In re Montgomery*, 311 N.C. 101, 109–10 (1984) (citing *Santosky v. Kramer*, 455 U.S. 745, 769 (1982)). The statutory burden of proof by clear, cogent, and convincing evidence as provided in N.C.G.S. § 7B-1109(f) also protects a parent's constitutional due process rights as enunciated by the United States Supreme Court in *Santosky*. 455 U.S. at 747–48 ("Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegations by at least clear and convincing evidence."); *see also Adams v. Tessener*, 354 N.C. 57, 63 (2001) (holding that a trial court's determination that "a parent's conduct is inconsistent with his or her constitutionally protected status must be supported by clear and convincing evidence."). Although the "clear, cogent, and convincing" burden of proof in termination of parental rights proceedings is a firmly rooted standard, this Court has necessarily addressed the considerations which a trial court must employ and incorporate in its determinations so as to demonstrate the trial court's compliance with the "clear, cogent, and convincing evidence" principle enunciated in N.C.G.S. § 7B-1109(f).

¶ 7 In *In re B.L.H.*, this Court held "that a trial court does not reversibly err by failing to explicitly state the statutorily-mandated standard of proof in the written termination order if . . . the trial court explicitly states the proper standard of proof in open court at the termination hearing." 376 N.C. at 120–21. In reaching this result, we examined the statutory language utilized in N.C.G.S. § 7B-1109(f) that "all findings of fact shall be based on clear, cogent, and convincing evidence" and concluded "that the statute implicitly includes a requirement that the trial court announce the standard of proof it is applying in making findings of fact in a termination proceeding," both to avoid rendering portions of the statute "useless" and to permit a reviewing court to ensure that the proper standard of proof was utilized by the trial court. *Id.* at 122–24. We expressly declined, however, to extend this requirement that a trial court "announce" the proper standard of proof to a mandate that the standard be explicitly stated in the trial court's written termination of parental rights order. *Id.* at 126. Thus, "the trial court satisfies the announcement requirement of N.C.G.S. § 7B-1109(f) so long as it announces the 'clear, cogent, and convincing' standard of proof *either* in making findings of fact in the written termination order or in making such findings in open court." *Id.*

¶ 8 In *In re M.R.F.*, another case involving a termination of parental rights appeal, this Court considered the circumstance in which the trial

court did not make an announcement either in its written order or in open court about the standard of proof that it applied to make findings of fact. *In re M.R.F.*, 378 N.C. 638, 2021-NCSC-111, ¶ 10. Citing our decision in *In re B.L.H.*, this Court held that the trial court failed to comply with the statutory mandate, while observing that

> due to petitioner's failure to present sufficient evidence to support any of the alleged grounds for the termination of the parental rights of respondent-father, we are compelled to simply, *without remand*, reverse the trial court's order. *See Arnold v. Ray Charles Enters., Inc.*, 264 N.C. 92, 99 (1965) ("To remand this case for further findings, however, when defendants, the parties upon whom rests the burden of proof here, have failed to offer any evidence bearing upon the point, would be futile."); *Cnty. of Durham v. Hodges*, 257 N.C. App. 288, 298 (2018) ("Since there is no evidence to support the required findings of fact, we need not remand for additional findings of fact. Instead, we reverse.").

Id. at ¶ 12 (extraneity omitted).

¶ 9 All of the parties in the present case agree that the trial court here, unlike the trial court in *In re B.L.H.*, did not announce in open court that it was applying the correct standard of proof. Moreover, unlike the trial court's written order in *In re M.R.F.* which was silent on the burden of proof utilized by the trial court, the trial court's written order purporting to terminate respondents' parental rights here did not simply fail to state the standard of proof, but overtly states the *wrong* standard of proof—a standard which is not only lesser than that required by statute but one which has also been held to be constitutionally insufficient to support the permanent severance of a parent-child relationship. For this reason, each respondent argues that the termination of parental rights order cannot stand. Likewise, the guardian ad litem candidly acknowledges that "the trial court's order would not be sufficient under due process or state statutory requirements to terminate the parental rights of [r]espondents" to Dylan and Julia.

¶ 10 However, DSS argues that "[w]hile the written order setting forth the grounds for termination of parental rights states that the court's findings were made upon a preponderance of the evidence, *it appears from examination of the record that the court applied a higher standard in*

reaching its decision . . . ." (Emphasis added). Specifically, DSS contends that

> the [trial] court's incorporation of the adjudication order's findings of fact and the [trial] court's finding that termination of the respondent[s'] parental rights was in the best interest of the juveniles, "beyond a reasonable doubt," indicate that the [trial] court applied a higher standard of proof than that set forth in [the] opening decree of the written order.
>
> . . .
>
> The [trial] court . . . applied the higher "beyond a reasonable doubt" standard when it determined that termination of parental rights was in the juveniles' best interest, and specifically mentioned that it had found that two grounds existed for the termination of parental rights, *within the same sentence*.

Thus, according to DSS, "[w]hen viewed in its entirety, the record indicates that the [trial] court applied a higher standard of proof than what is reflected in the order setting forth termination grounds." A gaping omission in the assertions of DSS is the agency's failure to explain the correctness of its position in the face of this Court's holding in *In re B.L.H.* that a trial court must "announce[ ] the 'clear, cogent, and convincing' standard of proof *either* in making findings of fact in the written termination order or in making such findings in open court." 376 N.C. at 126. Conversely, DSS cites no legal authority supporting any latitude that this Court possesses to allow us to infer an announcement by the trial court in the case proceedings or the termination order that it applied the clear, cogent, and convincing standard of proof when such an announcement plainly did not occur. DSS also fails to directly address the arguments by respondents—or the candid concession by the guardian ad litem—that our holdings in *In re B.L.H.* and *In re M.R.F.* make clear that the trial court's written order here is insufficient to terminate respondents' parental rights and therefore cannot be affirmed. As a result, pursuant to the precedent established by this Court, the trial court committed statutory error and the termination of parental rights order in the instant case cannot stand.

¶ 11 Having determined that we must set aside the trial court's termination of parental rights order due to its mistaken employment of the wrong standard of proof, this Court turns to the matter which consequently

arises concerning the appropriate means by which to implement corrective measures. The parties differ in their positions regarding the appropriate remedy. Respondents both contend that the termination of parental rights order should be vacated, thus ending this case. The GAL and DSS[7] maintain that the proper action for this Court is to remand the matter to the trial court for the entry of findings of fact which are made by the correct standard of clear, cogent, and convincing evidence, or for the trial court to clarify the standard of proof employed in making its findings of fact.

¶ 12 In support of their request for this Court to vacate the termination of parental rights order, respondents concede that where a trial court makes findings of fact without announcing the standard of proof employed to consider the evidence, the proper disposition is to vacate the order and remand for findings of fact under the proper standard, *see David N. v. Jason N.*, 359 N.C. 303, 307 (2005) ("The trial court, however, failed to apply the clear and convincing evidence standard . . . , and therefore this case must be remanded for findings of fact consistent with this standard of evidence."), unless the petitioner has failed to present evidence which could potentially support such findings of fact under the proper standard of proof, such that remand would be futile. *See In re M.R.F.*, 378 N.C. 638, 2021-NCSC-111, ¶ 10. Respondents cite *Santosky* for the proposition that, where a trial court "makes findings of fact based on an affirmatively-stated, constitutionally-deficient standard of proof, the remedy is to simply vacate the order" and further contend that the trial court's error here prejudiced respondents. *See Santosky*, 455 U.S. at 770.

¶ 13 The GAL and DSS, citing, *inter alia*, *In re M.R.F.*, contend that the record here would fully support the findings of fact contained in the termination of parental rights order even under the proper standard of "clear, cogent, and convincing" evidence and that therefore the proper action for this Court to take is to remand the matter for the entry of findings of fact made under the statutory standard.

¶ 14 We first address respondent-father's reliance on *Santosky*. In that case, the United States Supreme Court majority, in holding that the "clear and convincing" evidence standard of proof was necessary to comply with federal due process protections, did not discuss the

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7. In addition to its primary position that the trial court's termination of parental rights order should be affirmed, DSS, in a conclusory fashion, asks in the alternative that, if this Court concludes that the order cannot be affirmed, then the matter should be remanded to the trial court for, *inter alia*, clarification of the trial court's standard of proof.

evidence before the New York state court which was considering the termination of parental rights matter from which the appeal was taken.[8] We therefore find that *Santosky* does not control the specific issue regarding the disposition in this case, because the present case fully falls within the parameters of North Carolina case law precedent which has been generated pursuant to N.C.G.S. § 7B-1109(f) regarding the pivotal impact that the record evidence under appellate review has in the resolution of an appeal where a trial court has committed error regarding the standard of proof. *See In re M.R.F.*, 378 N.C. 638, 2021-NCSC-111, ¶ 26 (holding that "the evidence in the record of this case is insufficient to support findings which are necessary to establish any of the statutory grounds for termination . . . . upon which the trial court could expressly announce the proper application of the standard of proof upon remand to it by this Court"); *see also In re Church*, 136 N.C. App. 654, 658 (2000) (holding that where the standard of proof is not announced by the trial court but the record contains evidence which *could* support findings of fact supporting a ground for termination of parental rights under the appropriate standard, the case should be remanded for application of the proper standard of proof by the trial court). We further note that under *In re M.R.F.*, for this Court to remand in a termination of parental rights matter, the record should reflect that the trial court has "a sufficient foundation upon which the trial court could expressly announce the proper application of the standard of proof." *In re M.R.F.*, 378 N.C. 638, 2021-NCSC-111, ¶ 26.

¶ 15 In fashioning the remedy to rectify the trial court's erroneous termination order, it is worthy of reiteration that in *In re M.R.F.*, the trial court did not announce the standard of proof that it was utilizing in its determination, while in the current case, the trial court announced the employment of a standard of proof which happened to be incorrect. Despite the difference, in either circumstance, upon remand a trial court must review and reconsider the record before it by applying the clear, cogent, and convincing standard to make findings of fact. Accordingly, we conclude that remand of this case to the trial court for such an exercise is appropriate, unless "the record of this case is insufficient to support findings which are necessary to establish *any* of the statutory grounds for termination." *See id.*

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8. The dissenting opinion—in holding, *inter alia*, that the due process protections contained in the federal constitution did not mandate the "clear and convincing" standard in termination of parental rights proceedings—did look to the evidence in the case at bar and appears to suggest that the parents could not have prevailed even under the "clear and convincing" standard. *Santosky*, 455 U.S. at 781–85 (Rehnquist, J. dissenting).

¶ 16 Resultingly, we lastly consider whether the record here could support the grounds for termination of parental rights contained in the petition filed by DSS. Without commenting on the amount, strength, or persuasiveness of the evidence contained in the record, we merely conclude that we cannot say that remand of this case for the trial court's consideration of the evidence in the record utilizing the proper "clear, cogent, convincing" standard of proof would be "futile," *In re M.R.F.*, 378 N.C. 638, 2021-NCSC-111, ¶ 12 (quoting *Arnold*, 264 N.C. at 99), so as to compel us to conclude that "the record of this case is insufficient to support findings which are necessary to establish *any* of the statutory grounds for termination." *Id.* at ¶ 26. Therefore, we reverse the trial court's order terminating respondents' parental rights to Dylan and Julia and remand the matter to the trial court for its consideration of the record before it in order to determine whether DSS has demonstrated by clear, cogent, and convincing evidence that one or more statutory grounds exist to permit termination of parental rights.

REVERSED AND REMANDED.

IN THE MATTER OF J.I.G. AND A.M.G.

No. 154A21

Filed 18 March 2022

Child Abuse, Dependency, and Neglect—dependency—incapability to parent—cognitive defects and mental illness

The trial court properly terminated a father's parental rights in his children on grounds of dependency (N.C.G.S. § 7B-1111(a)(6)) where clear, cogent, and convincing evidence—along with the court's unchallenged findings of fact—supported a determination that, at the time of the termination hearing, the father was incapable of providing proper care and supervision of the children and there was a reasonable probability that this incapability would continue for the foreseeable future. Among other things, the father suffered from severe cognitive defects and mental illnesses (including bipolar disorder, attention deficit hyperactivity disorder, and an unspecified intellectual disability) that impaired his ability to reason, exercise judgment, or problem solve, and that there was no evidence showing that his mental condition was expected to change.

IN RE J.I.G.

[380 N.C. 747, 2022-NCSC-38]

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 19 March 2021 by Judge Denise Hartsfield in District Court, Forsyth County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Melissa Starr Livesay for petitioner-appellee Forsyth County Department of Social Services.

Mary V. Cavanagh and Jordan P. Spanner for appellee Guardian ad Litem.

Robert W. Ewing for respondent-appellant father.

MORGAN, Justice.

¶ 1 The trial court in this case terminated the parental rights of respondent-father to two juveniles, James and Amy[1], after finding that clear, cogent, and convincing evidence supported the existence of three grounds for the termination of parental rights as enumerated in N.C.G.S. § 7B-1111(a) (2021). Respondent-father challenges the evidentiary basis for the trial court's adjudication of the existence of each of the three grounds but does not challenge the trial court's conclusion that termination of respondent-father's parental rights served the best interests of the juveniles. Because we determine that clear, cogent, and convincing evidence supports the trial court's findings of fact which support the determination that respondent-father "is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of [N.C.G.S. §] 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future" as required by N.C.G.S. § 7B-1111(a)(6), the trial court's order terminating respondent-father's parental rights is affirmed.

I. Factual and Procedural Background

¶ 2 On 5 May 2017, 9-week-old James was admitted to the intensive care unit of Brenner Children's Hospital in Forsyth County after James's mother called the telephone emergency number 911 to report that the juvenile was limp and appeared to have ceased breathing. The attending

1. In accord with the regular practice of our appellate courts, pseudonyms have been utilized in lieu of the actual names of the children to protect their identities.

physician determined that James was in critical condition due to extensive non-accidental trauma which included approximately 67 fractures to the infant's bones throughout his body. The mother told the attending physician that she had left James propped upon the edge of a bed with a bottle and had left the room. When the juvenile's mother returned to the room, James was nonresponsive on the floor. A Forsyth County Department of Social Services (DSS) social worker interviewed James's mother at the hospital. The mother provided vacillating stories regarding the circumstances which existed at the time that the juvenile suffered his injuries. First, the child's mother represented that she was the only person who provided care for James and his three-year-old sister Amy, and that Amy must have been the one to hurt James because Amy was "hyper." Initially, the mother refused to reveal the identity of the father of James and Amy. Eventually, the mother revealed that respondent-father was the father of James and Amy, along with the disclosure that he had been residing in the same home as the children at the time of James's injuries. The mother explained that respondent-father would look after the children while she worked, and that respondent-father had been taking care of James and Amy while the mother worked on the night before James was admitted to the hospital for the infant's injuries. The DSS social worker interviewed the juvenile Amy on the following day. The social worker asked Amy if she knew how her brother James had been injured, and the three-year-old affirmatively nodded her head. Amy volunteered that "Mommy threw the baby on the floor" and that "Mommy was mad and shoved brother in [sic] the floor," as recorded by the DSS social worker. DSS also interviewed respondent-father who, like the mother, could not offer a plausible explanation for the cause of the injuries to James. While respondent-father instead repeatedly admitted that he had dropped James on the floor, the attending physician explained that respondent-father's story could not account for the extent of the infant's injuries.

¶ 3 On 9 May 2017, Forsyth County DSS filed juvenile petitions which alleged that both James and Amy were neglected and dependent juveniles, and that James was also an abused juvenile. The trial court entered orders granting nonsecure custody of both children to DSS on the same day based on the allegations contained within the petitions. On 13 September 2017, an adjudication hearing was held concerning the petitions. Respondent-father stipulated to the factual basis contained within the petitions, resulting in the trial court adjudicating James to be an abused, neglected, and dependent juvenile, and adjudicating Amy to be a neglected and dependent juvenile. Respondent-father was actively engaged in satisfying his case plan by attending the majority of his assigned

parenting classes, visitation sessions, and court-ordered mental health and substance abuse assessments. However, respondent-father was arrested on 7 November 2017 and charged with four counts of felony child abuse based upon the injuries sustained by James in May 2017. Respondent-father remained incarcerated throughout the pendency of this case due to his inability to secure funds to post his assigned bond on the felony charges.

¶ 4 On 6 December 2019, Forsyth County DSS filed a motion to terminate the parental rights of the mother and respondent-father. However, due to COVID-19, issues with notice, and the illness of counsel, the trial court dismissed the termination motion without prejudice. DSS subsequently filed a second motion on 13 November 2020 to terminate the parental rights of the children's mother and respondent-father, alleging that grounds existed to terminate respondent-father's parental rights to both James and Amy under N.C.G.S. § 7B-1111(a)(1) (neglect) and (6) (incapacity), and additionally as to James alone under N.C.G.S. § 7B-1111(a)(1) (abuse). The TPR motions in this case were heard on 22 February 2021. At the hearing, the trial court received testimony from DSS social workers, the Guardian ad Litem for the juveniles, the mother of the juveniles, and respondent-father. On 19 March 2021, the trial court entered an order pursuant to this hearing which terminated the parental rights of the mother and respondent-father to both James and Amy.

¶ 5 Based on previous adjudication orders entered in this case, DSS's investigation, and the testimony provided at the TPR hearing, the trial court entered findings in the termination of parental rights order which reflect that respondent-father has "severe cognitive defects" which present themselves as deficits in reasoning, problem solving, planning, and judgment. Further, respondent-father has an IQ of 61 and has been diagnosed with unspecified intellectual disability, bipolar disorder, and ADHD. Respondent-father has received SSI disability payments since he was seven years old due to his mental health and cognitive issues, and respondent-father has used these funds in the past to help to satisfy the basic needs of James and Amy. Respondent-father was ordered to complete a parenting capacity evaluation in order to assess his ability to parent, but he has declined an assessment arranged by DSS while he has been incarcerated.

¶ 6 In light of the refusal of both parents to explain the source of James's extensive injuries, the trial court found that both the mother and respondent-father were responsible for having abused their son. The trial court found that "there is no evidence presented that the Father's cognitive defects and abilities . . . are expected to change." Due to

respondent-father's profound mental impairment, the trial court further found that respondent-father "lacks the ability to independently care for the minor children" and "the capacity to parent." The trial court went on to find that clear, cogent, and convincing evidence supported the determination that grounds existed to terminate respondent-father's parental rights to James and Amy under N.C.G.S. § 7B-1111(a)(1) (neglect) and (6) (incapacity), and additionally as to James alone under N.C.G.S. § 7B-1111(a)(1) (abuse). The trial court concluded that the termination of the parental rights of respondent-father to James and Amy would serve the best interests of the juveniles. Respondent-father timely filed notice of appeal.[2]

II. Analysis

¶ 7 Before this Court, respondent-father contends that the trial court's findings of fact fail to establish that he lacked the capacity to parent, that James and Amy were neglected juveniles, and that James was an abused juvenile at the hands of respondent-father. Regarding the existence of the ground of dependency as memorialized in N.C.G.S. § 7B-1111(a)(6), respondent-father cites evidence in the record which he submits would support a finding that he would have the capacity to parent the juveniles once respondent-father is released from incarceration. Respondent-father also challenges the trial court's finding of fact that expresses respondent-father's incapacity to parent.

¶ 8 Respondent-father's appeal represents a challenge to the trial court's adjudication of the existence of each ground for the termination of respondent-father's parental rights contained within the order terminating his parental rights entered on 19 March 2021. Upon appeal, this Court is governed by the following principles:

> We review the trial court's adjudication under N.C.G.S. § 7B-1111(a) to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law. Unchallenged findings of fact are deemed supported by competent evidence and are binding on appeal. Moreover, we review only those findings needed to sustain the trial court's adjudication.
>
> The issue of whether a trial court's findings of fact support its conclusions of law is reviewed de novo. However, an adjudication of any single ground

2. The mother is not a party to this appeal.

> for terminating a parent's rights under N.C.G.S. § 7B-1111(a) will suffice to support a termination order. Therefore, if this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds.

In re B.J.H., 378 N.C. 524, 2021-NCSC-103, ¶ 11 (quoting *In re J.S.*, 374 N.C. 811, 814–815 (2020)) (extraneity omitted).

¶ 9 Being cognizant of both respondent-father's challenge to each of the grounds adjudicated to exist by the trial court and the settled rule that "the determination of the existence of any statutory ground which is duly supported is sufficient to sustain a termination order," *Id.* at ¶ 12, we begin by reviewing the trial court's adjudication under N.C.G.S. § 7B-1111(a)(6), which allows for the termination of parental rights if

> the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of G.S. 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C.G.S. § 7B-1111(a)(6). The ground of dependency requires that the petitioner show by clear, cogent, and convincing evidence that (1) the parent lacks the capacity to provide proper care and supervision of the juvenile such that the juvenile meets the definition of a dependent juvenile as found in N.C.G.S. § 7B-101(9), (2) "there is a reasonable probability that such incapacity will continue for the foreseeable future," and (3) "the parent lacks an appropriate child care arrangement." *In re Z.G.J.*, 378 N.C. 500, 511, 2021-NCSC-102 ¶ 31.

¶ 10 Here, the trial court entered the following relevant findings of fact in its 19 March 2021 order terminating respondent-father's parental rights:

> 79. [Respondent-father] reported to [DSS], as was found by the Court at Adjudication, that he receives SSI for "mental retardation, ADHD, and bipolar disorder."

> 80. [Respondent-father] has mental health conditions which include Bipolar Disorder and Attention Deficit Hyperactivity Disorder. [Respondent-father] has also been diagnosed with Unspecified Intellectual Disability.
>
> 81. [Respondent-father] has severe cognitive deficits, with an IQ of 61, and due to his deficits in reasoning, problem solving, planning, abstract thinking, and judgment, he is a vulnerable person.
>
> 82. There is no evidence presented that [respondent-father's] cognitive defects and abilities as described herein are expected to change.
>
> . . .
>
> 86. Testimony from the Respondent Mother, the Social Worker, and the Guardian ad Litem was consistent that [respondent-father] lacks the ability to independently care for the minor children.
>
> 87. Based upon all of the foregoing, [respondent-father] is unable to provide appropriate care and supervision for the minor children's needs, this incapacity is expected to continue for the foreseeable future, and he lacks an appropriate alternative child-care arrangement, such that the minor children are dependent juveniles within the meaning of [N.C.G.S. § 7B-101(9)].
>
> 88. . . . [Respondent-father] is not able to provide the care and supervision that the minor children require.

¶ 11 Respondent-father's sole argument in his exception to the trial court's finding of the ground of dependency is that "the trial court's findings of fact and conclusions that [respondent-father's] mental illness rendered him incapable of parenting his children at the time of the termination hearing was [sic] not supported by the competent evidence." While respondent-father expressly challenges only Finding of Fact 86, Finding of Fact 87 is also implicitly challenged by its inclusion of the trial court's ultimate finding as to respondent-father's ability to parent. All other findings of the trial court are unchallenged by respondent-father regarding the ground of dependency. These unchallenged findings are therefore "deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. 403, 407 (2019).

¶ 12 In support of his specific contention, respondent-father admits that the DSS social worker testified that respondent-father had not demonstrated to DSS his ability to parent, but argues that the social worker's testimony also established that respondent-father had exercised all of his scheduled visitations with the children during which he demonstrated safe parenting skills. Respondent-father further argues that the trial court's findings concerning his incapacity to parent could not be supported by the testimony of the children's Guardian ad Litem because, while the Guardian ad Litem testified that respondent-father was incapable of parenting, the Guardian ad Litem did not observe any of the visitations or review the DSS record of the visitations.

¶ 13 Respondent-father's acknowledgement of the evidence offered by the social worker and Guardian ad Litem regarding their respective observations that respondent-father was incapable of parenting, when juxtaposed against more favorable testimony regarding other aspects of respondent-father's displayed parenting skills, illustrate that the question posed to us in this regard is not whether the trial court's findings of fact were supported by clear, cogent, and convincing evidence, but whether the trial court assigned the proper weight and credibility to the evidence before it. The assignment of weight and evaluation of the credibility of the evidence resides solely within the purview of the trial court, and the trial court's factual determinations which are supported by clear, cogent, and convincing evidence, including the testimony of the social worker and Guardian ad Litem in the case at bar, are binding on appeal "notwithstanding evidence to the contrary." *In re J.R.F.*, 2022-NCSC-5, ¶ 34.

¶ 14 Respondent-father also notes that the testimony of the children's mother could not support the trial court's findings related to his inability to parent because, at the termination of parental rights hearing, the mother abruptly exited the hearing by withdrawing from the virtual meeting prior to being subjected to cross-examination by respondent-father's counsel. We agree with respondent-father that the mother's opinion about his ability to parent should not factor into the trial court's determination of the existence of grounds in light of the adversarial nature of the *adjudicatory phase* of termination of parental rights proceedings. *Compare In re R.D.*, 376 N.C. 244, 253 (2020) ("While it is axiomatic that cross-examination of an adverse witness is an essential right in adversarial proceedings, the dispositional stage of a termination proceeding is not adversarial." (citation omitted)), *with* N.C.G.S. § 7B-1109(f) (2021) ("The rules of evidence in civil cases shall apply" at the adjudication phase.). Concomitantly, we do not find the mother's opinion or the trial court's consideration of her opinion to be particularly salient on

the point of respondent-father's incapacity to parent, and "we limit our review to those challenged findings that are necessary to support the trial court's determination that respondent-father's parental rights should be terminated." *In re N.G.*, 374 N.C. 891, 900 (2020). The portion of the trial court's Finding of Fact 86 which refers to testimony of the mother is thereby discarded in our analysis of the trial court's order. *Id.* at 901 (disregarding portion of finding of fact not supported by the evidence.).

¶ 15 Even after addressing respondent-father's challenges to the trial court's adjudication of grounds to terminate his parental rights under N.C.G.S. § 7B-1111(a)(6), there remain ample unchallenged findings of fact supported by clear, cogent, and convincing evidence to support a finding of dependency. The trial court found that respondent-father suffered from severe mental infirmities which demonstrably impaired his ability to reason, plan, exercise judgment, think abstractly, and problem solve. Respondent-father had a tenuous grasp of the concept of dates as evidenced by his provision of random, inaccurate birthdates of his children and his initial testimony that the children were last in his care years prior to James's birth. Respondent-father testified that "it shouldn't be that long" before he would be able to complete the parenting capacity evaluation and parenting classes despite being incarcerated awaiting trial on felony charges with an unknown release date. The trial court considered such evidence and incorporated its determinations regarding the information in a manner which is supported by the record and appropriately assessed by the trial court.

¶ 16 Contrary to respondent-father's contention that the trial court's findings were "not based on the evidence at the time of the termination proceeding" because the trial court did not consider his participation in mental health and parenting services prior to his incarceration, the trial court's uncontested findings establish that, at the time of the termination hearing, respondent-father suffered from debilitating mental infirmities which rendered him incapable of providing care for James and Amy such that the juveniles were dependent as defined by N.C.G.S. § 7B-101(9). The trial court's further uncontested findings establish that the juveniles "lack[ed] an appropriate alternative child-care arrangement" and that respondent-father's "incapacity is expected to continue for the foreseeable future." Therefore, the trial court's order contains sufficient findings of fact, which are in turn supported by clear, cogent, and convincing evidence, to support the trial court's ultimate determination that grounds existed under N.C.G.S. § 7B-1111(a)(6) to terminate respondent-father's parental rights. Because we conclude that at least one of the alleged grounds for the termination of respondent-father's

parental rights was supported by findings of fact based on clear, cogent, and convincing evidence, we need not address respondent-father's further challenges regarding the remaining grounds of abuse or neglect. *In re B.J.H.*, 378 N.C. at 529.

III. Conclusion

¶ 17 The trial court order terminating respondent-father's parental rights as to James and Amy reflected the trial court's finding that respondent-father's incapacity to parent rendered the juveniles dependent as defined by N.C.G.S. § 7B-101(9), and that there was a reasonable probability that the incapability would continue for the foreseeable future. This finding was supported by other uncontested findings of fact or by clear, cogent, and convincing evidence on the record. Respondent-father does not appeal the trial court's dispositional conclusion that termination of respondent-father's parental rights would serve the best interests of the children. We therefore determine that there is no error in the trial court's order entered on 19 March 2021 which terminated the parental rights of respondent-father.

AFFIRMED.

IN THE MATTER OF K.N.L.P., T.L.S.P., AND R.W.P.

No. 301A21

Filed 18 March 2022

Termination of Parental Rights—best interests of the child—sufficiency of findings—statutory factors

The trial court did not abuse its discretion by concluding that termination of a father's parental rights was in his son's best interests, where the dispositional findings were supported by sufficient evidence—including findings regarding the father's minimal role in the son's upbringing, the son's significant behavioral improvements since entering social services' custody, the bond between the father and son, and the son's interest in and likelihood of adoption. Furthermore, the court properly considered the statutory factors in N.C.G.S. § 7B-1110(a) and performed a reasoned analysis in reaching its conclusion.

IN RE K.N.L.P.

[380 N.C. 756, 2022-NCSC-39]

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 13 May 2021 by Judge Emily G. Cowan in District Court, Henderson County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Sara H. Player for petitioner-appellee Henderson County Department of Social Services.

Sloan L. E. Carpenter and C. Kyle Musgrove for appellee Guardian ad Litem.

Edward Eldred for respondent-appellant father.

BARRINGER, Justice.

¶ 1 Respondent appeals from an order terminating his parental rights to three of his children. However, respondent has only presented arguments concerning the termination of parental rights as to R.W.P. (Rob).[1] After careful review, we affirm the trial court's order.

I. Background

¶ 2 In August 2019, a physical altercation occurred between Rob's mother's[2] boyfriend and Rob's half-brother, resulting in the involvement of law enforcement. Rob and his two siblings had been subject to continued exposure to methamphetamine, and they tested positive for methamphetamine a few weeks after the altercation. Shortly thereafter, the Henderson County Department of Social Services (DSS) filed a juvenile petition alleging that Rob and his two siblings were neglected juveniles. Pursuant to court order, DSS then took nonsecure custody of the three children.

¶ 3 At the time of DSS's intervention, the mother cared for the children, and the paternity of Rob was uncertain. Rob's birth certificate did not list a legal father. Respondent was incarcerated during the fall of 2019 and had been for two years. In August 2017, a jury convicted respondent of possession of a schedule II controlled substance, and in March 2019,

1. Pseudonyms are used in this opinion to protect the juveniles' identities and for ease of reading.

2. Rob's biological mother is not a party to this appeal.

respondent was convicted of possession of a controlled substance on the premises of a penal institution.

¶ 4 On 21 November 2019, the trial court filed a consent adjudication order, which found Rob and his two siblings to be neglected juveniles. Then, on 13 December 2019, respondent was released from prison. Subsequently, respondent submitted to genetic testing, which determined that the probability of paternity was 99.9%. The trial court then entered an order establishing that respondent is the paternal father of Rob.

¶ 5 Despite being required under his case plan to submit to random drug screens, respondent refused to submit to most of the requested drug screens throughout the course of the proceedings. On two occasions, he admitted to the social worker that his drug screens, if completed, would be positive for marijuana. Respondent's lack of contact with DSS from November 2020 to March 2021 further prevented additional drug screens. Since respondent did not provide the necessary drug screens, respondent did not successfully complete the substance abuse intensive outpatient program also required by his case plan. Respondent further did not report any substance abuse or mental health treatment after August 2020. Thus, the trial court found that respondent had failed to correct the conditions that led to the juveniles' removal from the home.

¶ 6 On 5 January 2021, DSS filed a motion to terminate respondent's and the mother's parental rights to all three children. Following a hearing on 8 April 2021, the trial court found that grounds existed for termination of respondent's and the mother's parental rights to all three children for neglect, N.C.G.S. § 7B-1111(a)(1) (2021), and failure to make reasonable progress, N.C.G.S. § 7B-1111(a)(2), and that such termination of respondent's and the mother's parental rights was in the children's best interests.

¶ 7 Respondent appealed. On appeal, respondent does not challenge the trial court's conclusion that grounds for termination existed under N.C.G.S. § 7B-1111(a) or any findings of fact supporting this conclusion. Rather, respondent alleges that the trial court abused its discretion in its best interests determination as to Rob.

II. Analysis

¶ 8 A termination-of-parental-rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109 to -1110 (2021). At the adjudicatory stage, the trial court "adjudicate[s] the existence or nonexistence of any of the circumstances set forth in [N.C.]G.S. [§] 7B-1111 which authorize the termination of parental rights

of the respondent." N.C.G.S. § 7B-1109(e). If the trial court adjudicates that one or more grounds for terminating a parent's rights exist, the trial court proceeds to the dispositional stage where it determines "whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a).

¶ 9 When reviewing a trial court's actions at the dispositional stage, appellate courts review the trial court's assessment of a juvenile's best interests solely for an abuse of discretion. *In re S.D.C.*, 373 N.C. 285, 290 (2020). "Under this standard, we defer to the trial court's decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *In re A.K.O.*, 375 N.C. 698, 701 (2020) (cleaned up).

¶ 10 When assessing whether termination of a parent's rights is in a juvenile's best interests, "[t]he [trial] court may consider any evidence, including hearsay evidence as defined in [N.C.]G.S. [§] 8C-1, Rule 801, that the [trial] court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile." N.C.G.S. § 7B-1110(a). Further, the trial court considers the following criteria and makes written findings regarding those that are relevant:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C.G.S. § 7B-1110(a).

¶ 11 The trial court's dispositional findings are binding on appeal if supported by the evidence received during the termination hearing or not specifically challenged on appeal.[3] *In re S.C.C.*, 379 N.C. 303, 2021-NCSC-144, ¶ 22.

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3. In past cases, we have used the term "competent evidence" when describing the standard of review applicable to the dispositional findings of fact in a termination-of-parental-rights order. *See, e.g.*, *In re K.N.K.*, 374 N.C. 50, 57 (2020). In some contexts,

¶ 12 Here, the trial court concluded that termination of respondent's parental rights was in the best interests of all three children and made the following dispositional findings of fact:

> 1. The juvenile [Tom] is thirteen (13), the juvenile [Kate] is twelve (12), and the juvenile [Rob] is ten (10).
>
> 2. The father has never been the primary caretaker for the juveniles. He had a friendship with the neighbor of the family and would see the juveniles but was not involved in their upbringing. The juveniles were primarily raised by the mother and the maternal grandmother, who has since passed away.
>
> 3. All three juveniles love their parents and identify their biological parents as their parents. [Tom] and [Kate] have a bond with their parents but the parents' long-term substance abuse issues have affected the juveniles' relationship with their parents. Both [Tom] and [Kate] are more attached to their mother but worry a lot about both parents. [Rob] has more of an attachment to the mother than [Tom] or [Kate].
>
> 4. All of the juveniles have struggled with what they want and have expressed a desire to go home but only if the parents could be sober and provide a safe home. They have grown and matured since being in foster care and are able to see what a stable home looks like and are able to enjoy their childhood. The older juveniles are doing well academically and are involved in extracurricular activities.

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competent evidence means admissible evidence pursuant to the rules of evidence. *See Evidence*, *Black's Law Dictionary* (11th ed. 2019). However, N.C.G.S. § 7B-1110(a) makes clear that the evidence that the trial court receives and considers when determining the best interests of the juvenile need not be admissible under the North Carolina Rules of Evidence. Further, our precedent and the Rules of Appellate Procedure dictate when we can review the admissibility of evidence admitted by the trial court. Accordingly, for clarity, we are avoiding the phrase "competent evidence" in the context of determinations of a juvenile's best interests in termination-of-parental-rights orders in favor of using the language the statute itself employs: "evidence."

5. The juvenile [Rob's] behavioral issues have improved significantly since coming [in]to [DSS] custody. He is now receiving regular therapy to address trauma from his life before foster care, as are his siblings.

6. The likelihood of the juveniles' adoption is high, particularly for [Tom] and [Kate] who are in a kinship placement that is a pre-adoptive home. [Rob] has been in his therapeutic foster home since December 2020 but that foster family adopted another ten-year-old child so [DSS] is hopeful that [Rob] may be adopted also. All three juveniles have indicated a desire to be adopted.

7. This [c]ourt has previously adopted a permanency plan of adoption for these juveniles, and termination of the parental rights as ordered herein will aid in the accomplishment of this plan.

8. The juveniles [Tom] and [Kate] have a strong and loving bond with the [foster] family and are very attached to the couple. The couple has been meeting the needs of the juveniles, involving the juveniles in activities, and helping them with their schoolwork. The older juveniles take pride in their schoolwork now.

¶ 13 Respondent concedes that dispositional findings of fact one, four, seven, and eight are supported by evidence before the trial court but challenges in part dispositional findings two, three, five, and six as they relate to Rob. DSS and the guardian ad litem disagree, arguing that evidence supports the four dispositional findings of fact.

A. Dispositional Finding of Fact Number Two

¶ 14 As to dispositional finding of fact number two, respondent objects to the definitiveness of the trial court's finding that respondent was *never* the primary caretaker and was *not* involved in Rob's upbringing. However, as acknowledged by respondent, one of the social workers testified that respondent "hasn't been a primary caretaker of the children." That social worker also testified that the children had "been raised by their mom and their maternal grandmother the majority of their lives." While the social worker clarified that her statement was based on her own knowledge and that respondent saw the kids "a

lot" because respondent had a relative living next door to the maternal grandmother, the social worker's testimony is evidence supporting the trial court's dispositional finding of fact. When there is evidence to support the trial court's dispositional finding, the finding is binding on this Court. *In re S.C.C.*, ¶ 22. It is the duty of the trial court—not an appellate court—to determine the weight and veracity of the evidence and the reasonable inferences to be drawn therefrom. *In re A.R.A.*, 373 N.C. 190, 196 (2019). Therefore, we hold that dispositional finding of fact number two is supported by the evidence.

B. Dispositional Finding of Fact Number Three

¶ 15 Next, respondent argues "there is no evidence to support the *sub silentio* finding that Rob does not have a bond with [respondent]." (Emphasis added.) Yet a *sub silentio* finding is an unexpressed finding. *See Sub Silentio*, *Black's Law Dictionary* (11th ed. 2019). The trial court's order does not contain a dispositional finding of fact that Rob does not have a bond with respondent. Instead, the binding, unchallenged part of finding of fact three addressing the bond between Rob and respondent is that he loves his parents and identifies his biological parents as his parents. Thus, there is no dispositional finding of fact for this Court to review as it relates to this argument, but we are bound to the trial court's finding concerning Rob and respondent's bond, specifically that Rob loves respondent and identifies respondent as his parent. *Cf. In re A.R.A.*, 373 N.C. at 199 (recognizing that a trial court need not make a finding concerning a factor that is not placed at issue by virtue of conflicting evidence presented to the trial court).

¶ 16 Similarly, respondent argues "there was no evidence to support a finding that substance [ab]use affected [respondent's] relationship *with Rob*, to the exten[t] the trial court even made that finding." Here, as well, respondent challenges a finding that does not exist in the termination-of-parental-rights order. The trial court found that "[Rob's older siblings, Tom and Kate,] have a bond with their parents[,] but the parents' long-term substance abuse issues have affected the juveniles' relationship with their parents." Thus, there is no dispositional finding of fact for this Court to review as it relates to this argument.

C. Dispositional Finding of Fact Number Five

¶ 17 Respondent then contests the finding that Rob's behavioral issues "have improved significantly since coming [in]to [DSS] custody." However, as identified by DSS and the guardian ad litem, the evidence and unchallenged adjudicatory findings of fact support a finding of significant improvement.

¶ 18 When Rob came into DSS custody, he was nine, had aggressive and violent tendencies, and had been suspended from school and riding the bus. He was diagnosed with attention deficit hyperactivity disorder. While Rob was initially placed with his siblings at his aunt and uncle's home, his aunt and uncle could not meet Rob's needs as they had a two-year-old child, and the aunt was pregnant with twins.

¶ 19 Thereafter, Rob was placed with a distant maternal cousin, who was a special education teacher. This cousin helped Rob make significant progress with his behaviors. However, due to a family member needing hospice care in the cousin's home, the cousin could not continue to care for Rob. Thus, Rob was moved to a foster family.

¶ 20 Thereafter, Rob was moved to a therapeutic foster home, where he received trauma-focused therapy. When asked whether Rob's behavior stabilized after being transferred to a therapeutic foster home, one of the social workers answered in the affirmative. The social worker explained that the first couple of months went really well and that most of Rob's behavioral issues have been school related. Rob also got along well with a ten-year-old child at his therapeutic foster home. Additionally, Rob had not been suspended from school since he came into foster care. Given this evidence, the trial court could find that Rob's behavioral issues "have improved significantly since coming [in]to [DSS] custody." *See In re D.W.P.*, 373 N.C. 327, 330 (2020) ("The trial judge's decisions as to the weight and credibility of the evidence, and the inferences drawn from the evidence are not subject to appellate review.").

¶ 21 Respondent also challenges the finding that Rob's therapy addressed "trauma from his life before foster care" when there was only testimony that Rob's therapy switched to being "more trauma-focused." We agree that the testimony in the record does not expressly reflect that his therapy addressed trauma from his life before foster care, but this is a reasonable inference by the trial court based on the evidence it received at the termination-of-parental-rights hearing. The unchallenged adjudicatory findings of fact reflect Rob's continued exposure to methamphetamine when in the care of his mother, which resulted in him testing positive for methamphetamine in 2019; that a physical altercation occurred between Rob's half-brother and his mother's boyfriend; and the absence of respondent due to his incarceration for felony drug convictions. Therefore, in light of the evidence before the trial court, we are bound to this finding and cannot disturb it on appeal.

D. Dispositional Finding of Fact Number Six

¶ 22 Respondent further argues that there is no evidence supporting the finding that the likelihood of adoption for Rob was high. Respondent argues that this finding is flatly contradicted by the social worker's testimony that to her knowledge the therapeutic foster family had not expressed an interest in adopting Rob and that there was no proposed adoptive placement.

¶ 23 However, DSS argues that respondent overlooks other testimony from the social worker. The social worker identified that Rob's paternal grandmother had expressed interest in having Rob stay with her, a home study of the paternal grandmother's home had been requested, and Rob's paternal grandmother would be able to apply to adopt Rob. Additionally, based on the social worker's testimony, the trial court found that "[Rob] has been in his therapeutic foster home since December 2020 but that foster family adopted another ten-year-old child so [DSS] is hopeful that [Rob] may be adopted also." Respondent has not challenged this finding. Thus, there is evidence supporting the trial court's finding that the likelihood of Rob's adoption is high. "[F]indings of fact are binding 'where there is some evidence to support those findings, even though the evidence might sustain findings to the contrary.' " *In re R.D.*, 376 N.C. 244, 258 (2020) (quoting *In re Montgomery*, 311 N.C. 101, 110–11 (1984)).

¶ 24 Finally, while conceding that there is testimony from the social worker affirmatively answering yes to the question of whether "[Rob has] expressed whether he would like to be adopted recently," respondent contends it cannot support the finding by the trial court that Rob "indicated a desire to be adopted." We disagree. The trial court does not have to adopt verbatim the wording of the testifier; instead, the finding needs to be supported by evidence. Here, the social worker's testimony is evidence supporting the trial court's dispositional finding.

E. Abuse of Discretion

¶ 25 Respondent concludes by arguing that the trial court abused its discretion in making its best interests determination as to Rob because the trial court relied on two dispositional findings of fact that were not supported by the evidence. Specifically, respondent cites the implied finding that Rob was not bonded with respondent and the finding that Rob was likely to be adopted. However, we have rejected the arguments concerning these dispositional findings. Evidence supported the finding that Rob's likelihood of adoption was high, and the trial court found, and respondent has not challenged, that Rob loved respondent and identified respondent as his parent. Thus, these dispositional findings of fact

relating to Rob's bond with respondent and his likelihood of adoption are binding on this Court.

¶ 26 We also have repeatedly recognized that "the bond between parent and child is just one of the factors to be considered under N.C.G.S. § 7B-1110(a), and the trial court is permitted to give greater weight to other factors." *In re Z.L.W.*, 372 N.C. 432, 437 (2019); *see also*, *e.g.*, *In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 30. The fact that Rob loved respondent and identified respondent as his parent does not render the trial court's determination that termination of respondent's parental rights was in Rob's best interests an abuse of discretion.

¶ 27 Additionally, while, in this matter, the trial court found as supported by the evidence that the likelihood of adoption was high, we have recognized that "[t]he trial court is not required to find a likelihood of adoption in order for termination to be in a child's best interests." *In re G.G.M.*, 377 N.C. 29, 2021-NCSC-25, ¶ 25.

¶ 28 Here, the trial court's order reflects that it considered the statutory factors identified in N.C.G.S. § 7B-1110(a) when reaching its conclusion that terminating respondent's parental rights was in Rob's best interests and performed a reasoned analysis to reach this conclusion. *See In re Z.A.M.*, 374 N.C. 88, 101 (2020). Respondent has not shown that the trial court's conclusion is manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision. Thus, we cannot conclude that the trial court abused its discretion by concluding that termination of respondent's parental rights was in Rob's best interests.

III. Conclusion

¶ 29 The trial court did not abuse its discretion by concluding that termination of respondent's parental rights was in Rob's best interests. Accordingly, we affirm the trial court's order terminating respondent's parental rights to his children.

AFFIRMED.

IN RE L.D.

[380 N.C. 766, 2022-NCSC-40]

IN THE MATTER OF L.D., A.D.

No. 155A21

Filed 18 March 2022

Termination of Parental Rights—grounds for termination—failure to make reasonable progress—continued drug use—lack of contact with DSS

An order terminating a mother's parental rights to two children was affirmed where the trial court's findings—that one of the children was born cocaine-positive, that the mother continued to use drugs and gave birth to another drug-positive baby during the pendency of this case, that she did not provide proof of employment or of completion of a rehabilitation program, that she maintained a relationship with the children's father despite his abuse of the children's sibling, and that she failed to cooperate or remain in contact with DSS—supported the conclusion that the mother willfully left the children in placement outside the home for more than twelve months without making reasonable progress to correct the conditions that led to their removal.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from orders entered on 4 February 2021 by Judge Christopher Rhue in District Court, Scotland County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Quintin Byrd for petitioner-appellee Scotland County Department of Social Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Wendy C. Sotolongo, Parent Defender, and Jacky Brammer, Assistant Parent Defender, for respondent-appellant mother.

NEWBY, Chief Justice.

IN RE L.D.

[380 N.C. 766, 2022-NCSC-40]

¶ 1 Respondent, the mother of L.D. (Larry) and A.D. (Amy),[1] appeals from the trial court's order terminating her parental rights. After careful review, we affirm.

¶ 2 Larry was born on 16 November 2016.[2] The Scotland County Department of Social Services (DSS) received a report on 7 February 2018 that Larry's eleven-week-old sibling, Lisa, was admitted into the emergency room at Scotland Memorial Hospital. She was diagnosed with acute bleeding on the brain and a subdural hematoma. Lisa also had fractures on her ribs, which were healing, along with other injuries, including a circular burn the size of a cigarette on her lower right leg. Respondent and the father[3] claimed that Lisa was injured by falling off the couch. Medical professionals at the hospital, however, believed this explanation was "inconsistent with the type of injuries that [Lisa] ha[d] sustained." Later testing "revealed retinal hemorrhaging in both eyes, indicative of Shaken Baby Syndrome." On 9 February 2018, DSS filed a petition alleging that Larry was a neglected juvenile. Larry was initially placed in kinship care with his maternal grandmother.

¶ 3 On 16 February 2018, the trial court entered an order granting DSS nonsecure custody of Larry. That same day, DSS filed an amended juvenile petition adding allegations that the father had shaken Lisa and that he was incarcerated on charges of felonious child abuse. DSS further alleged that Larry's maternal grandmother "was allowing [Larry to have] contact with the respondent mother in violation of a safety assessment," and that respondent was incarcerated on charges of misdemeanor larceny and shoplifting. Respondent tested positive for cocaine, benzodiazepines, and methadone on 23 March, 9 April, and 11 June 2018. Respondent refused drug screens on 23 April, 3 May, 30 May, 27 June, and 27 July 2018. On 13 June 2018, respondent "made a case plan with DSS," but did not sign it. That plan

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1. Pseudonyms are used in this opinion to protect the juveniles' identities and for ease of reading.

2. Only two children, Larry and Amy, are at issue in this case. There are five children in total. Respondent is not the mother of the biological father's oldest child, J.B. Respondent and the children's biological father are the parents of, in order: L.D. (Larry); the sibling who was abused (Lisa); A.D. (Amy); and the last child born on 9 October 2019 (Alex).

3. The trial court also terminated the parental rights of the father to both Larry and Amy. The father, however, did not appeal the trial court's order and is not a party to this appeal.

> found that the issues that needed to be addressed were substance abuse and recommended treatment, appropriate supervision and discipline, including parenting classes, establishing a stable home and employment, cooperating with [DSS], and maintaining contact with [DSS] at least once per week, and visiting the juvenile a[nd] supporting placement of the juvenile.

¶ 4 Amy was then born on 7 October 2018; her father is the same as Larry's father. On 9 October 2018, DSS filed a juvenile petition alleging that Amy was neglected and obtained nonsecure custody of Amy. The petition alleged that Amy tested positive for cocaine at birth and respondent tested positive for cocaine and methadone when Amy was born. Respondent admitted to using cocaine two days before the delivery. DSS also alleged respondent "ha[d] not been compliant with completing needs identified on her case plan, and continue[d] to test positive for illegal substances."

¶ 5 Following a hearing on 18 October 2018, the trial court determined with the parties' consent that Larry was neglected. This determination was memorialized in an adjudication order entered on 25 February 2019 in which respondent stipulated to facts consistent with the allegations in DSS's amended petition. In a separate disposition order, the trial court directed that Larry remain in DSS custody.

¶ 6 Following a hearing on 10 January 2019, the trial court entered a second consent adjudication order on 25 February 2019 determining that Amy was neglected. The court also found in a separate disposition order that respondent had failed to address any of the issues identified in her case plan. Respondent had again tested positive for cocaine on 4 January 2019. The trial court ruled that further reunification efforts would be unsuccessful and inconsistent with Amy's needs based on Lisa's non-accidental injuries and the parents' failure to address the issues that led to Amy's removal. The trial court ordered that Amy remain in DSS custody and relieved DSS of further reunification efforts. The court also discontinued respondent's visits with Amy pending guidance from a therapist about the appropriateness of visitation. After a review hearing on 10 January 2019, the trial court entered a review order in Larry's case on 25 February 2019. The trial court found reunification efforts would also be unsuccessful and inconsistent with Larry's needs. The trial court ordered that Larry remain in DSS custody, relieved DSS of further reunification efforts, and discontinued respondent's visits with Larry.

¶ 7 Following a permanency planning hearing on 7 February 2019, the trial court entered orders on 27 February 2019 setting the permanent plan for the children as custody with a relative with a concurrent plan of reunification. The trial court held another permanency planning hearing on 28 March 2019 and entered review orders on 6 June 2019. The trial court found that respondent was enrolled at the Black Mountain inpatient substance abuse treatment center and was scheduled to complete the program in May 2019. The trial court further found that respondent still was not employed, did not have stable housing, and had not enrolled in parenting classes. The trial court changed the permanent plan to adoption with a concurrent plan of reunification and ordered DSS to proceed with the plan.

¶ 8 The trial court held another permanency planning hearing on 30 May 2019 and entered review orders on 24 June 2019. The trial court found that respondent completed the Black Mountain program on 3 May 2019 but had not participated in any additional substance abuse treatment. Respondent was pregnant with another child as the possible result of her continuing relationship with the father, and she had not contacted DSS. The trial court found that respondent "spent the Memorial Day Weekend with [the father] at a hotel in Myrtle Beach, South Carolina."

¶ 9 After the next permanency planning hearing on 25 July 2019, in orders entered on 28 August 2019, the trial court found that "[s]ince the last permanency planning hearing, the respondent mother has had no contact with DSS" and was not present for the hearing. The trial court also found that respondent had not provided any financial support for the children. The trial court again ordered that respondent not have visitation with the children "due to the severity of injuries suffered by the juvenile's sibling" and because respondent was "failing to successfully address the issues which led to removal." Following a permanency planning hearing on 19 December 2019, the trial court entered orders finding that respondent still had no contact with DSS; had not provided financial support for her children; had given birth to Alex in October of 2019, who tested positive for cocaine; and was "residing in a Drug Addiction Treatment Center in Smithfield, North Carolina." The court ordered DSS "to proceed with [the] permanent plan" of adoption for both children.

¶ 10 On 24 January 2020, DSS filed petitions to terminate respondent's parental rights to Larry and Amy on the grounds of neglect, *see* N.C.G.S. § 7B-1111(a)(1) (2021); willfully leaving the children in a placement outside the home while failing to make reasonable progress, *see id.* § 7B-1111(a)(2) (2021); and willful abandonment, *see id.* § 7B-1111(a)(7) (2021). In orders filed on 4 February 2021, the trial court determined

that grounds existed to terminate respondent's parental rights under N.C.G.S. §§ 7B-1111(a)(1), (2), and (7). The trial court concluded that terminating respondent's parental rights was in the children's best interests. *See id.* § 7B-1110(a) (2021). Accordingly, the trial court terminated respondent's parental rights to Larry and Amy. Respondent appeals.

¶ 11 On appeal respondent contends the trial court erred by determining grounds existed to terminate her parental rights. Respondent argues several of the trial court's findings of fact are not supported by clear, cogent, and convincing evidence. Respondent then contends the trial court's findings of fact do not support its conclusion of law that she willfully failed to make reasonable progress.

¶ 12 A termination of parental rights proceeding consists of an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2021).

> "We review a trial court's adjudication under N.C.G.S. § 7B-1111 'to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law.' " *In re E.H.P.*, 372 N.C. 388, 392, 831 S.E.2d 49, 52 (2019) (quoting *In re Montgomery*, 311 N.C. 101, 111, 316 S.E.2d 246, 253 (1984)); *see also* N.C.G.S. § 7B-1109(f) (2019). Unchallenged findings are deemed to be supported by the evidence and are "binding on appeal." *In re Z.L.W.*, 372 N.C. 432, 437, 831 S.E.2d 62, 65 (2019). "Moreover, we review only those [challenged] findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58–59 (2019).

In re L.M.M., 2021-NCSC-153, ¶ 10 (quoting *In re K.N.K.*, 374 N.C. 50, 53, 839 S.E.2d 735, 737–38 (2020) (alteration in original)). The trial court's supported findings are "deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379, 831 S.E.2d 305, 310 (2019).

¶ 13 Here the trial court concluded that a ground existed to terminate respondent's parental rights under N.C.G.S. § 7B-1111(a)(2). A trial court may terminate parental rights if "[t]he parent has willfully left the juvenile in foster care or placement outside the home for more than 12 months without showing to the satisfaction of the court that reasonable progress under the circumstances has been made in correcting

those conditions which led to the removal of the juvenile." N.C.G.S. § 7B-1111(a)(2).

> Termination under this ground requires the trial court to perform a two-step analysis where it must determine by clear, cogent, and convincing evidence whether (1) a child has been willfully left by the parent in foster care or placement outside the home for over twelve months, and (2) the parent has not made reasonable progress under the circumstances to correct the conditions which led to the removal of the child.

In re Z.A.M., 374 N.C. 88, 95, 839 S.E.2d 792, 797 (2020). A parent's reasonable progress "is evaluated for the duration leading up to the hearing on the . . . petition to terminate parental rights." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (quoting *In re A.C.F.*, 176 N.C. App. 520, 528, 626 S.E.2d 729, 735 (2006)).

> [A] respondent's prolonged inability to improve her situation, despite some efforts in that direction, will support a finding of willfulness regardless of her good intentions, and will support a finding of lack of progress . . . sufficient to warrant termination of parental rights under section 7B-1111(a)(2).
>
> [P]arental compliance with a judicially adopted case plan is relevant in determining whether grounds for termination exist pursuant to N.C.G.S. § 7B-1111(a)(2).

Id. (citations and quotation marks omitted) (alterations in original).

¶ 14 In its order concluding grounds existed to terminate respondent's parental rights as to Larry, the trial court made the following findings of fact:

> 21. That [DSS] assumed non-secure[ ] custody on February 15, 2018 . . . .
>
> . . . .
>
> 23. That the minor child . . . was adjudicated to be a neglected juvenile on October 18, 2018 via a stipulation that he did not receive proper care, supervision or environment from his parents or custodians, and lived in an environment injurious to his welfare . . . .

. . . .

25. That the initial Family Services Case Plan for [respondent] found that the issues that needed to be addressed were substance abuse and recommended treatment, appropriate supervision and discipline, including parenting classes, establishing a stable home and employment, cooperating with [DSS], and maintaining contact with [DSS] at least once per week, and visiting the juvenile a[nd] supporting [the] placement of the juvenile.

26. That during the pendency of this case [respondent] failed to make substantial progress on [her] Family Services Case Plan.

. . . .

28. That [the] [o]rder from the January 10, 2019 [review hearing] released [DSS] of reasonable efforts towards the reunification with [respondent] due to [her] noncompliance with [her] Family Services Case Plan, and continuing to test positive for controlled substances.

29. That on January 4, 2019 [respondent] tested positive for cocaine.

30. That on January 10, 2019 [respondent] was not employed, did not have stable housing, and has gone to very few parenting classes.

. . . .

33. That the [c]ourt, on January 10, 2019 found that due to the very serious and life-threatening injuries sustained by the juvenile's younger sibling [Lisa,] which were injuries no[t] the result of an accident, in addition to the parents' failure to address the issues which led to removal, including the birth of a drug positive infant in 2018, that further reunification efforts would be futile and inconsistent with the juvenile's health, safety and need for a safe and permanent home within a reasonable period of time, and it would be in the best interest of the juvenile for [DSS] to be

> relieved of further reunification efforts and proceed with a permanent plan for the juvenile.
>
> . . . .
>
> 35. That [respondent] over the pendency of this matter has continuously used controlled substances for which she does not have a prescription and has given birth to two controlled[-]substances[-]positive children during the pendency of this matter.
>
> . . . .
>
> 40. That [respondent] ha[s] only sporadically made contact with [DSS] to check on the status or welfare of [her] minor child.
>
> . . . .
>
> 43. That the minor child has been out of the home for more than 32 months at the time of this hearing.

Then, in a section titled "Ultimate Findings of Fact," the trial court found the following:

> 2. That . . . [respondent] ha[s] made no attempts to correct any conditions that led to the removal.
>
> 3. That [respondent] did not timely participate in substance abuse treatment, did not find suitable housing, and did not find suitable employment.
>
> 4. That [respondent] d[oes] not provide care or sustenance for [her] minor child, and ha[s] not visited on a regular basis.
>
> 5. That [respondent] did not make inquiries on [her] minor child on a consistent basis. And ha[s] not made regular contact with [DSS] to determine which actions [she] needed to take to regain custody of [her] minor child.
>
> 6. That [respondent] . . . has made little to no efforts to correct the conditions that led to the removal of her child, and has made no contact with [DSS] to ascertain what she must do to correct those

> conditions, and has made no regular visits with her child.
>
> . . . .
>
> 8. That [respondent] ha[s] willfully left the juvenile, [Larry,] in foster care for more than twelve months without showing to the satisfaction of the Court that reasonable progress under the circumstances has been made in correcting those conditions which led to the removal of the juvenile.

¶ 15 The trial court entered a separate order concluding that grounds existed to terminate respondent's parental rights to Amy. Many of the trial court's findings in that order are identical to those in the order terminating respondent's rights to Larry. The following are the findings of fact in the order regarding Amy that differ from those in the order regarding Larry:

> 21. That [DSS] assumed non-secure[ ] custody on October 9, 2018 because [DSS] received a report on October 8, 2018 regarding the juvenile. The juvenile was born on October 7, 2018, and tested positive for cocaine. [Respondent] tested positive for cocaine and methadone at the time of the juvenile's birth.
>
> 22. That [respondent] admitted that she had used cocaine two days before she gave birth to [Amy].
>
> 23. That [DSS] had recent child protective services history in that three of the juvenile's siblings were currently in foster care due to the physical abuse of an infant child, substance abuse, and mental health concerns. [Respondent] has not been compliant with meeting the needs identified on her Family Services Case Plan and continued to test positive for illegal substances.
>
> . . . .
>
> 25. That the minor child, [Amy,] was adjudicated to be a neglected juvenile on October 10, 2019 via a stipulation that she lived in an environment injurious to her welfare . . . .

> 26. That [respondent] does not have stable housing, and gave birth to another cocaine-positive infant in October 2019.
>
> . . . .
>
> 44. That the minor child has been out of the home for more than 24 months at the time of this hearing.
>
> . . . .
>
> 47. That the mother attended Black Mountain Recovery Center in 2019, and left said program early without sufficient explanation.
>
> 48. That [respondent] ha[s] failed to provide any form of substantial support for the minor child.
>
> 49. That [respondent] and [the] father still have an active relationship.
>
> . . . .
>
> 51. That [respondent] indicated that she would consume controlled substances as a way of coping.

¶ 16 Respondent argues that several findings of fact are unsupported by the evidence. Respondent contests finding of fact 47 in Amy's order, which states that she "attended Black Mountain Recovery Center in 2019, and left said program early without sufficient explanation." She asserts this finding is contrary to the court's own findings in its 24 June 2019 permanency planning order. In that order the trial court found that respondent "completed the Black Mountain inpatient substance abuse treatment center . . . program on May 3, 2019" and that "[s]he completed the program early as she [was] pregnant." Robbie Lowery, a foster care supervisor at DSS, testified that respondent stayed at Black Mountain for less than ninety days and left early "due to her pregnancy, but they let her leave and didn't have any concerns." Respondent also testified that she left Black Mountain early because she was pregnant. Accordingly, we disregard the portion of finding of fact 47 stating that respondent left the "[Black Mountain] program early without sufficient explanation." *See In re N.G.*, 374 N.C. 891, 901, 845 S.E.2d 16, 24 (2020) (disregarding findings not supported by the evidence).

¶ 17 Respondent also challenges finding of fact 49 in Amy's order, which states that she and the father "still have an active relationship." Respondent contends that because she last saw the father in October

of 2019, she did not have an active relationship with him at the time of the hearing. Amy was born on 7 October 2018 as a result of respondent's ongoing relationship with the father. In its review order filed on 24 June 2019, the trial court found that respondent "maintains a relationship with the . . . father as she spent the Memorial Day Weekend with him at a hotel in Myrtle Beach, South Carolina." On 9 October 2019, respondent gave birth to Alex, whose father is the same as Larry's and Amy's. Accordingly, substantial evidence supported the finding that respondent maintained an active relationship with the father.

¶ 18 Respondent next challenges the findings that she "had not been in regular contact with [DSS]." Respondent contends that the findings are unsupported but also suggests it was "unreasonable" for her to continue contacting DSS because she already knew the contents of her case plan; one of the social workers was not responsive to her calls; and once reunification efforts were ceased, DSS said it would not "hold [her] hand." Regardless of these arguments, respondent's case plan required her to "cooperat[e] with [DSS]" and to "maintain[ ] contact with [DSS] at least once per week." After respondent was released from the Black Mountain program in May of 2019, she did not contact DSS. Moreover, one of the social workers, Laura Gardner, testified that from August of 2019 until July of 2020, the period when she was assigned to the family, respondent never contacted DSS. Robbie Lowery testified that from July of 2020 onward, respondent did not call DSS to inquire about the welfare of her children. In her own testimony, respondent admitted she did not stay in regular contact with DSS. Thus, substantial evidence supports these findings.

¶ 19 Respondent also contends that the trial court's findings related to her case plan progress "are wholly unsupported by the other findings and the evidence." The trial court found that respondent "failed to make substantial progress," "made no attempts to correct any conditions that led to the removal," and "did not timely participate in substance abuse treatment, did not find suitable housing, and did not find suitable employment." Respondent contends, however, that her actions in the spring and summer of 2020—specifically, completing another substance abuse treatment program, obtaining a job, and securing a two-bedroom apartment—indicate that she made reasonable progress on her case plan.

¶ 20 In so doing, respondent erroneously relies in part on evidence presented at the disposition stage of the proceeding. *See In re Z.J.W.*, 376 N.C. 760, 2021-NCSC-13, ¶ 17 (holding that the trial court erroneously "relied upon . . . dispositional evidence as support for its adjudicatory finding"). Moreover, respondent relies on her own testimony at the

adjudicatory stage detailing her progress in the spring and summer of 2020. Robbie Lowery, however, testified respondent had not followed through on any of her case plan requirements and never presented proof of employment. Laura Gardner testified that respondent did not attempt to show she was addressing her substance abuse issues and made no requests for DSS to inspect a new residence. Although respondent informed Laura Gardner in April 2020 that she was employed, had entered another rehabilitation program, and was expected to graduate in June 2020, respondent never provided evidence of her employment or completion of the rehabilitation program. The trial court weighed this competing evidence and found the testimony from DSS staff to be more credible than respondent's testimony. *See In re C.A.H.*, 375 N.C. 750, 759, 850 S.E.2d 921, 927 (2020) (noting that the trial court, given its unique position, is the proper entity to make credibility determinations). Accordingly, we conclude that the findings that respondent did not make progress on her case plan are supported by the evidence.

¶ 21 The trial court's findings of fact support its conclusion that respondent's parental rights were subject to termination based on N.C.G.S. § 7B-1111(a)(2). Larry was removed from respondent's care on or about 7 February 2018. Amy was removed from respondent's care on or about 9 October 2018. Both children had remained continuously in their placements outside of respondent's care when the termination of parental rights petitions were filed on 24 January 2020. Thus, both children were in a placement outside respondent's care for more than twelve months preceding the filing of the petitions.

¶ 22 Moreover, the evidence showed that respondent exhibited a prolonged inability to improve her situation. Larry was originally removed from respondent's care because the father abused Lisa. Nonetheless, respondent continuously maintained a relationship with the father throughout these proceedings. Moreover, respondent did not improve her substance abuse. From March until July of 2018, respondent repeatedly either tested positive for controlled substances or refused drug screens. Then on 7 October 2018, Amy tested positive for cocaine when she was born, and respondent admitted to using cocaine two days before the birth. Respondent tested positive for cocaine again on 4 January 2019. The trial court ceased efforts toward reunification with respondent in part because respondent "continue[d] to test positive for illegal substances." Although respondent completed the Black Mountain treatment program in May of 2019, her last child, born in October of 2019, also tested positive for cocaine at birth. Respondent "was not employed, did not have stable housing, and ha[d] gone to very few parenting classes."

Respondent also consistently failed to cooperate and remain in contact with DSS. Thus, the trial court's findings of fact support its conclusion of law that respondent willfully left the children in a placement outside the home and failed to make reasonable progress. Accordingly, the trial court properly terminated respondent's parental rights under N.C.G.S. § 7B-1111(a)(2).

¶ 23 Respondent also argues the trial court erred in terminating her parental rights under N.C.G.S. §§ 7B-1111(a)(1) and (7). Because we conclude the trial court properly terminated respondent's parental rights based on N.C.G.S. § 7B-1111(a)(2), we do not address respondent's remaining arguments. *See In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982) (stating that an appealed order should be affirmed when any one of the grounds found by the trial court is supported by findings of fact based on clear, cogent, and convincing evidence); *see also* N.C.G.S. § 7B-1111(a) ("The court may terminate the parental rights upon a finding of one or more [grounds for termination.]"). Thus, we affirm the trial court's orders.

AFFIRMED.

IN THE MATTER OF M.S.L. A/K/A M.S.H.

No. 215A21

Filed 18 March 2022

1. Termination of Parental Rights—jurisdiction—sufficiency of findings

In a termination of parental rights matter, the trial court's general finding that it had jurisdiction over the parties and the subject matter of the action was supported by the record and met the jurisdictional requirements of N.C.G.S. § 7B-1101.

2. Termination of Parental Rights—grounds for termination—neglect—stipulations to factual circumstances—sufficiency of findings

The trial court properly terminated a father's parental rights to his daughter based on neglect after making findings that, although respondent was not responsible for the child's initial removal from the home (which was based on her testing positive for controlled

substances at birth), he had a long-standing drug addiction, he continued to use drugs after he came forward as the child's father, and he lied to the court about his drug use. Although the court's findings were limited due to respondent having stipulated to the factual circumstances underlying the grounds for termination, the findings were supported by competent evidence and were in turn sufficient to support the court's conclusions of law.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 9 March 2021 by Judge Denise S. Hartsfield in District Court, Forsyth County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Theresa A. Boucher for petitioner-appellee Forsyth County Department of Social Services.

Parker Poe Adams & Bernstein LLP, by Maya Madura Engle, for Guardian ad Litem.

Benjamin J. Kull for respondent-appellant.

NEWBY, Chief Justice.

¶ 1 Respondent-father appeals from the trial court's order terminating his parental rights to M.S.L. a/k/a M.S.H. (Monica).[1] Because we hold the trial court did not err in terminating respondent's parental rights, we affirm the trial court's order.

¶ 2 Monica was born on 2 March 2019. Monica's biological mother, who is not a party to this appeal, has an extensive history of drug use, including during her pregnancy with Monica. At birth Monica tested positive for substances due to her mother's drug use. On 13 March 2019, the Forsyth County Department of Social Services (DSS) obtained custody of Monica. That same day she was placed in a foster home, where she has remained.

¶ 3 Initially Monica's mother identified C. Hall as Monica's father. Hall signed an affidavit of paternity. Paternity tests later revealed, however,

1. A pseudonym is used in this opinion to protect the juvenile's identity and for ease of reading.

that he was not Monica's biological father. On 21 November 2019, respondent reported to DSS that he believed he was Monica's father. Respondent and Monica's mother had met years earlier when respondent was dating Monica's maternal grandmother. Respondent later revealed to the social worker that their relationship was "not something that was in the open" and was a "dirty old man type of thing."

¶ 4 After respondent reported he might be Monica's father, his paternity tests were rescheduled multiple times, partially attributable to respondent. Ultimately, respondent's 21 January 2020 paternity test confirmed he was Monica's father. Respondent met with DSS in early March of 2020. While at first respondent reported that he did not use drugs with the mother, shortly thereafter respondent admitted that he and the mother had "gotten high together" before she was pregnant. Respondent also told the social worker that the mother had texted him a few weeks before the meeting about "getting . . . drugs." Respondent stated that though his "drug of choice" was cocaine, he had not used drugs in the six months preceding March of 2020.

¶ 5 The trial court held a hearing in the case on 24 June 2020. In the resulting juvenile order dated 22 July 2020, the trial court found that respondent, who has five older children, had history with Child Protective Services in both Illinois and Virginia relating to his older children from when he lived in those states. Respondent also reported that he had spent five months imprisoned in Illinois for leaving the state with his children without their mother's consent. At the time of the hearing, respondent was on probation for a Level 5 DWI. Respondent also had previous convictions for DWIs, which resulted in the loss of his driver's license, as well as convictions for possession of drug paraphernalia. Additionally, respondent had prior convictions in Virginia for soliciting for prostitution and using a vehicle to promote prostitution.

¶ 6 Respondent reported that he had completed a substance abuse assessment sometime in or before 2019, but he refused a drug screen on 11 June 2020. Though the court had not ordered visitation, the court found that DSS had arranged weekly visits via video conference. Respondent had only attended (or logged in to) three of the nine total video visits.

¶ 7 In that same order, however, the trial court established the primary plan as reunification with respondent and the secondary plan as adoption. To achieve reunification, the trial court ordered respondent to (1) complete a mental health and substance abuse assessment and follow all recommendations, (2) comply with random hair and urine drug

screens, and (3) enter into an out-of-home family services agreement and a visitation plan with DSS. The court provided respondent with weekly visitation via phone or video.

¶ 8 The trial court entered another juvenile order on 22 October 2020. In that order, the trial court found the following: the day after the 24 June 2020 hearing, respondent submitted to hair and urine drug screens, both of which returned positive results indicating cocaine use.[2] Shortly thereafter, respondent admitted that he had used 11 days prior to the 25 June 2020 screening. On 5 August 2020, respondent reported that he had continued using cocaine because he was stressed.

¶ 9 On 6 August 2020, respondent took a urine screen, which was negative for substances. On 18 August 2020, respondent completed a clinical assessment and was diagnosed with cocaine use disorder. Respondent indicated at that time he had been clean for three weeks. Toward the end of August, respondent completed part of his psychological evaluation/parenting capacity assessment. Dr. Bennett, who conducted the assessment, concluded respondent had difficulty acknowledging the nature of his substance use problem, struggled with defensiveness, impulse control, and poor judgment, and presented with "significant grandiosity and [had] limited insight into his short period of recovery." Dr. Bennett concluded that respondent's actions did not support his readiness to be a parent. Dr. Bennett made six recommendations: he concluded that respondent should (1) complete all random drug tests and have no refused tests, or those would count as positive tests; (2) attend counseling; (3) complete a substance use disorder assessment and follow treatment recommendations, including staying in contact with a treatment provider and attending substance abuse support groups; (4) obtain, maintain, and document stable housing and finances; (5) participate in treatment for substance use disorder; and (6) continue to be involved in Monica's life.

¶ 10 The trial court additionally found that respondent had attended seven virtual visits, failed to attend one visit, and that three visits were rescheduled because respondent did not confirm the visits in advance. Because of respondent's positive test in June of 2020 and his later admissions, the court concluded that respondent had previously provided false testimony to the court about his drug usage. Based upon all of the evidence, the trial court changed the permanent plan to adoption with the secondary plan as reunification with the father. The trial court

2. Between the date of respondent's 25 June 2020 drug screen and 6 August 2020 drug screen, on 22 July 2020, the court terminated the mother and Hall's rights to the child. Neither the mother nor Hall are parties to this appeal.

ordered DSS to file a petition to terminate respondent's parental rights within 60 days.

¶ 11 On 5 November 2020, DSS filed a petition to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) (2021) (neglect), N.C.G.S. § 7B-1111(a)(2) (willfully leaving the child outside the home without making reasonable progress), and N.C.G.S. § 7B-1111(a)(5) (failure to legitimate). Respondent filed an answer wherein he admitted all of the allegations in the complaint. Respondent, however, requested to be heard regarding the best interests determination and stated that based on the best interests factors set forth in N.C.G.S. § 7B-1110 (2021), the trial court should not terminate respondent's parental rights.

¶ 12 On 10 February 2021, the trial court held a hearing on the termination petition. When questioned at the hearing, respondent "agreed . . . that [DSS] ha[d] enough evidence to go forward and prevail" on the grounds asserted for termination in the termination petition. Respondent confirmed that he had not come to the hearing to be heard on the grounds for termination but wanted to be heard on the best interests determination. In an order entered 9 March 2021, the trial court recognized respondent's stipulation as to the circumstances supporting the grounds for termination, made findings of fact consistent with those alleged in the termination petition to which respondent stipulated, and concluded that grounds existed to terminate respondent's rights based on all three grounds alleged in the petition. The trial court also determined that terminating respondent's rights was in Monica's best interests. Therefore, the trial court terminated respondent's parental rights.

¶ 13 On appeal respondent argues (1) that the trial court erred by failing to make a sufficient finding that it had subject matter jurisdiction, and (2) that the findings of fact do not support the conclusions of law that grounds exist to terminate respondent's parental rights. We address each argument in turn.

I. Jurisdiction

¶ 14 **[1]** Respondent first argues that the trial court did not make a finding pursuant to N.C.G.S. § 7B-1101 that it had jurisdiction, meaning the court could not exercise jurisdiction over the matter here. Respondent concedes that the record supports a conclusion that the trial court had jurisdiction over the matter. Respondent also recognizes that in the termination order, the trial court stated that "[t]he Court has jurisdiction over the parties and subject matter of this action." Nevertheless, respondent argues that the juvenile code, set forth in the North Carolina

General Statutes, requires a specific finding of jurisdiction, and that the trial court failed to satisfy that statutory requirement here.

¶ 15 N.C.G.S. § 7B-1101 provides, in part,

> The court shall have exclusive original jurisdiction to hear and determine any petition or motion relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition or motion. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. *Provided, that before exercising jurisdiction under this Article, the court shall find that it has jurisdiction to make a child-custody determination under the provisions of G.S. 50A-201, 50A-203, or 50A-204.*

N.C.G.S. § 7B-1101 (2021) (emphasis added). This Court has previously determined that compliance with the juvenile code does not require a finding that explicitly mirrors the relevant statutory language. *See In re K.N.*, 378 N.C. 450, 2021-NCSC-98, ¶ 22 (concluding that the trial court had subject matter jurisdiction over the case where the trial court only made a general finding that it had jurisdiction and the record supported such a determination), *petition for reh'g denied*, No. 459A20 (N.C. Sept. 24, 2021) (order).

¶ 16 Here the trial court stated that it "has jurisdiction over the parties and the subject matter of this action." The record here supports the trial court's finding and a conclusion that the trial court had both subject matter and personal jurisdiction in this case. Given that Monica resided in North Carolina since her birth, North Carolina is her "home state." As respondent concedes, while the case here was pending, this Court rejected the same argument that respondent has raised, *see In re K.N.*, ¶¶ 18–22. Thus, because the trial court's finding and the record support a conclusion that the trial court had subject matter jurisdiction here, respondent's argument is overruled.

II. Grounds for Termination

¶ 17 **[2]** Respondent next asserts that the trial court improperly relied on respondent's stipulation at the hearing, which amounted to an

impermissible stipulation to conclusions of law.[3] Additionally, respondent asserts that the trial court's findings of fact do not support a conclusion of law that respondent neglected Monica, and thus his parental rights were not subject to termination on this ground. Respondent argues that because Monica was placed into DSS custody based upon the mother's neglect of the child, the findings do not show that respondent neglected the child. Respondent asserts that any conclusion that allows for termination of parental rights here, where he was not responsible for the initial neglect, undermines the legislature's stated intent in N.C.G.S. § 7B-1111(a)(1).

¶ 18 "The court may terminate the parental rights upon a finding . . . [t]he parent has abused or neglected the juvenile. The juvenile shall be deemed to be abused or neglected if the court finds the juvenile to be . . . a neglected juvenile within the meaning of G.S. 7B-101." N.C.G.S. § 7B-1111(a)(1). A neglected juvenile is defined in pertinent part as a juvenile "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; or who has been abandoned; . . . or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2019). "To terminate parental rights based on neglect, 'if the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent.' " *In re D.L.A.D.*, 375 N.C. 565, 567, 849 S.E.2d 811, 814 (2020) (quoting *In re D.L.W.*, 368 N.C. 835, 843, 788 S.E.2d 162, 167 (2016)).

> This Court has repeatedly stated that "[w]hen determining whether a child is neglected, the circumstances and conditions surrounding the child are what matters, not the fault or culpability of the

3. In addition to the ground discussed below, respondent also contends that the trial court erred by concluding that his parental rights were subject to termination based on N.C.G.S. § 7B-1111(a)(2) (willfully leaving the child outside the home without making reasonable progress) and N.C.G.S. § 7B-1111(a)(5) (failure to legitimate). Because the trial court properly terminated respondent's parental rights based on N.C.G.S. § 7B-1111(a)(1) as we discuss hereinafter, we need not address these arguments. *See In re Moore*, 306 N.C. 394, 404, 293 S.E.2d 127, 133 (1982) (holding that an appealed order should be affirmed when any one of the grounds of the trial court is supported by findings of fact based on clear, cogent, and convincing evidence); *see also* N.C.G.S. § 7B-1111(a) ("The court may terminate the parental rights upon a finding of one or more [grounds for termination.]").

Notably, though respondent only challenged the trial court's best interests determination at the trial court proceeding, respondent abandoned any argument related to best interests on appeal. Moreover, though respondent stipulated to the circumstances supporting the alleged grounds for termination at the trial court, now, for the first time on appeal, respondent challenges the alleged grounds for termination.

> parent." *In re Z.K.*, 375 N.C. 370, 373, 847 S.E.2d 746, 748–49 (2020); *see also In re S.D.*, 374 N.C. 67, 75, 839 S.E.2d 315, 322 (2020) ("[T]here is no requirement that the parent whose rights are subject to termination on the grounds of neglect be responsible for the prior adjudication of neglect."); *In re J.M.J.-J.*, 374 N.C. 553, 564, 843 S.E.2d 94, 104 (2020) (rejecting the respondent's argument "that the trial court's conclusion of neglect was erroneous because he was not responsible for the conditions that resulted in [his daughter's] placement in DSS custody").

In re M.Y.P., 378 N.C. 667, 2021-NCSC-113, ¶ 16 (alterations in original). Additionally, "[a] parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re M.A.*, 374 N.C. 865, 870, 844 S.E.2d 916, 921 (2020) (quoting *In re M.J.S.M.*, 257 N.C. App. 633, 637, 810 S.E.2d 370, 373 (2018)); *see also In re W.K.*, 376 N.C. 269, 278–79, 852 S.E.2d 83, 91 (2020) (noting that "[b]ased on respondent-father's failure to follow his case plan and the trial court's orders and his continued abuse of controlled substances, the trial court found that there was a likelihood the children would be neglected if they were returned to his care").

¶ 19 After respondent stipulated to the circumstances surrounding the grounds to terminate his parental rights, the trial court made the following findings and conclusions:

> 7. [Respondent], the biological father of [Monica] has neglected her.
>
> 8. On May 20, 2019, [Monica] was adjudicated to be a neglected child within the meaning of N.C.G.S. 7B-101.
>
> 9. [Monica] has been in the nonsecure and legal custody of the Forsyth County Department of Social Services since March 13, 2019. Since that time, [respondent] has neglected his daughter and has failed to demonstrate to the Juvenile Court that he can provide a safe home for the child pursuant to the provisions of N.C.G.S. 7B-101(19).
>
> 10. [Respondent] is the biological father of the child. He presented himself to the Forsyth County Department of Social Services, the legal custodian of the child on

> November 21, 2019 stating that he believed himself to be the father of [Monica]. [Respondent] delayed taking a paternity test multiple times and paternity was not confirmed until January 21, 2020.
>
> 11. [Respondent] has continued to neglect [Monica] by failing to engage in efforts in order to provide a safe home for the child and demonstrate that he can meet her basic needs.
>
> 12. [Respondent] has failed to comply with substance abuse treatment and he has continued to use controlled substances.
>
> 13. [Respondent] has failed to comply with the recommendations of his Parenting Capacity Psychological assessment.
>
> 14. Return of [Monica] to the care, custody and control of [respondent] will result in a strong likelihood of repeated of [sic] neglect of the child.
>
> . . . .
>
> 17. The grounds alleged in N.C.G.S. 7B-1111(a)(1), (2) and (5) as they relate to [respondent] were stipulated to and have been proven by clear, cogent and convincing evidence.

Additionally, the trial court found that respondent had a long-standing substance abuse addiction, had previously lied to the court about his substance use, and that he continued to test positive for cocaine use after 11 September 2020 despite reporting that the last date of cocaine use was 11 September 2020. The trial court also found that respondent adamantly denied being an addict and adamantly denied using cocaine after 11 September 2020. The trial court found relevant that respondent has five adult children with whom he has no ongoing relationship, all of whom he had not seen in years, though he contended that he wanted Monica to know these adult children. Finally, the trial court noted that it was suspicious of respondent's "motives given his past indiscretions including a sexual relationship with [Monica's] mother and grandmother at different times."

¶ 20 While this case is somewhat unusual in that respondent admitted all allegations in the termination petition and stated that he did not wish to challenge the circumstances surrounding the grounds to terminate his

parental rights, this Court has previously recognized that an individual can stipulate to facts underlying a juvenile proceeding, even where those facts ultimately support a termination order. *See In re M.Y.P.*, 378 N.C. 667, 2021-NCSC-113, ¶ 16 (recognizing that the respondent had stipulated to findings of fact supporting an adjudication order, which ultimately supported the trial court's determination in the termination order that the child had been previously neglected). Therefore, we reject respondent's argument that the stipulation to the circumstances here was improper, as, viewed properly, respondent's stipulation related to *factual* circumstances surrounding the grounds for termination.

¶ 21 The trial court's findings as to neglect here were limited because of respondent's factual stipulations.[4] Nonetheless, they are sufficient for the trial court to conclude that respondent neglected Monica within the meaning of the statute. While respondent was not responsible for Monica's initial placement with DSS, respondent stipulated that Monica had previously been adjudicated neglected, which stemmed from Monica testing positive for controlled substances at birth. Despite this history, after respondent presented himself as Monica's father, he continued to use controlled substances, contrary to the recommendations from his parenting capacity assessment and knowing the trial court's stated plan for the juvenile. Respondent also failed to recognize the severity of his continuous drug abuse and was repeatedly dishonest with the trial court about his continued cocaine use. As such, the trial court properly terminated respondent's parental rights based upon neglect. *See In re M.A.W.*, 370 N.C. 149, 153–55, 804 S.E.2d 513, 517–18 (2017) (concluding that the trial court properly terminated the respondent's parental rights based upon neglect where, though the respondent was imprisoned at the time the child was originally adjudicated neglected, the child was placed into DSS' care based upon the mother's substance abuse and, after the respondent's release from prison, he failed to follow through with the court's directives).

¶ 22 Here the trial court's findings of fact are supported by clear, cogent, and convincing evidence, and those findings support the trial court's conclusions of law. Accordingly, we affirm the trial court's termination order.

AFFIRMED.

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4. The trial court's order here is consistent with what respondent chose to argue at the trial court given that he stipulated to the circumstances surrounding the grounds for termination, did not wish to be heard regarding those grounds, and only wished to be heard regarding the best interests determination.

IN RE S.M.

[380 N.C. 788, 2022-NCSC-42]

IN THE MATTER OF S.M.

No. 534A20

Filed 18 March 2022

Termination of Parental Rights—best interests of the child—consideration of factors—sufficiency of evidence and findings

The trial court did not abuse its discretion by concluding that terminating a mother's and father's parental rights in their eleven-year-old daughter was in the child's best interests, where the court's factual findings were supported by competent evidence and demonstrated a proper analysis of the dispositional factors set forth in N.C.G.S. § 7B-1110(a). Notably, the child—whom the parents had exposed to sexually inappropriate boundaries, inappropriate discipline, and grooming behaviors—had an unhealthy bond with her parents characterized by guilt and a distorted sense of loyalty; the parents refused to acknowledge the problems that led to the child's removal from their home, deflecting blame for the child's trauma to the "system" and the department of social services; and there was a high likelihood of adoption where, despite her history of behavioral issues, the child had shown a real improvement after finding stability in her foster home and developing a trusting relationship with her foster mother.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from the order entered on 22 September 2020 by Judge Doretta L. Walker in District Court, Durham County. This matter was calendared in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

The Law Office of Derrick J. Hensley, PLLC, by Derrick J. Hensley, for petitioner-appellee Durham County Department of Social Services.

Brendan A. Bailey and Ashley A. Edwards for Guardian ad Litem.

Kathleen M. Joyce for respondent-appellant mother.

Benjamin J. Kull for respondent-appellant father.

EARLS, Justice.

¶ 1 Respondents appeal from the trial court's order terminating their parental rights to S.M. (Sarah).[1] Respondents assert that the trial court erred in concluding it was in Sarah's best interests to terminate their parental rights. After careful review, we affirm the trial court's order.

I. Background

¶ 2 On 25 May 2017, Durham County Department of Social Services (DSS) filed a juvenile petition alleging that Sarah, age eight at the time, was neglected. The petition alleged that respondent-father asked Sarah's older half-sister, Ginny, to bathe him, despite being fully capable of bathing himself. The petition further alleged respondent-father had inappropriate sexualized discussions with Ginny, had engaged in "grooming" behaviors with Ginny, and had inappropriately disciplined both Ginny and Sarah by pinching their buttocks. The petition also noted respondent-father's previous sex offense convictions for acts against his two oldest daughters, who were now adults.

¶ 3 Respondents agreed to place Sarah in an approved kinship placement. Between May and November, Sarah moved placements three times. The safety placements reported that Sarah displayed inappropriate sexualized behavior and language. In November 2017, Sarah's final kinship placement informed DSS that she could no longer remain in the home. DSS filed a subsequent petition on 28 November 2017, alleging Sarah to be neglected and dependent. Due to the lack of a safety placement, DSS was granted nonsecure custody of Sarah.

¶ 4 On 15 December 2017, Sarah was adjudicated neglected and dependent. The trial court found she was subjected to inappropriate discipline and exposed to domestic violence in the home; respondent-father "refused to adhere to normal interpersonal boundaries" with Sarah and Ginny; and respondent-mother failed to protect Sarah. The court placed Sarah in the legal custody of DSS.

¶ 5 Following a permanency planning hearing, the trial court entered an order on 6 February 2019 setting Sarah's permanent plan as reunification with an alternative plan of guardianship with a court-approved caretaker. The trial court cited respondents' failure to acknowledge or remediate the issues that led to Sarah's removal. In a subsequent permanency planning order entered in July 2019, the trial court noted respondents'

1. Pseudonyms are used in this opinion to protect the juvenile's identity and for ease of reading.

continued lack of progress and changed Sarah's permanent plan to adoption with alternative plans of guardianship and reunification. Following a permanency planning hearing on 14 October 2019, the court relieved DSS from further reunification efforts and removed reunification as an alternative permanent plan based on respondents' continued failure to engage in services or acknowledge the issues that caused Sarah to be removed from the home.

¶ 6 On 15 October 2019, DSS filed a motion to terminate respondents' parental rights on the grounds of neglect and willfully leaving Sarah in foster care for more than twelve months without a showing of reasonable progress to correct the conditions that led to Sarah's removal. *See* N.C.G.S. § 7B-1111(a)(1)–(2) (2019).

¶ 7 Following a hearing on 26 and 30 June 2020, the trial court entered an order on 22 September 2020, concluding that grounds existed to terminate respondents' parental rights in Sarah pursuant to N.C.G.S. § 7B-1111(a)(1) and (2). The court also concluded it was in Sarah's best interests that respondents' parental rights be terminated. Respondents appealed.

II. Analysis

¶ 8 Our Juvenile Code provides for a two-stage process for the termination of parental rights—an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109, -1110 (2019). At the adjudicatory stage, the petitioner bears the burden of proving by "clear, cogent, and convincing evidence" the existence of one or more grounds for termination under N.C.G.S. § 7B-1111(a). N.C.G.S. § 7B-1109(f) (2019). Here, the trial court determined there was sufficient evidence to terminate respondents' parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) and (2), and neither respondent has challenged this portion of the trial court's ruling. Accordingly, we consider only the dispositional portion of the trial court's order.

¶ 9 At the dispositional hearing, "the court shall determine whether terminating the parent's rights is in the juvenile's best interest." N.C.G.S. § 7B-1110(a) (2019).

> The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
>
> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

Id. "Although the trial court must consider each of the factors in N.C.G.S. § 7B-1110(a), written findings of fact are required only 'if there is conflicting evidence concerning the factor, such that it is placed in issue by virtue of the evidence presented before the district court.' " *In re G.G.M.*, 377 N.C. 29, 2021-NCSC-25, ¶22 (quoting *In re A.R.A.*, 373 N.C. 190, 199 (2019)).

¶ 10 " 'The trial court's dispositional findings are binding . . . if they are supported by any competent evidence' or if not specifically contested on appeal." *In re B.E.*, 375 N.C. 730, 745 (2020) (quoting *In re E.F.*, 375 N.C. 88, 91 (2020)). The trial court's assessment of a juvenile's best interests is reviewed solely for abuse of discretion. *In re D.L.W.*, 368 N.C. 835, 842 (2016) (citing *In re L.M.T.*, 367 N.C. 165, 171 (2013); *see also In re Montgomery*, 311 N.C. 101, 110 (1984)). "Under this standard, we defer to the trial court's decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *In re J.J.B.*, 374 N.C. 787, 791 (2020) (cleaned up).

¶ 11 Here, respondents argue that there was insufficient evidence to support many of the trial court's dispositional findings and that the court abused its discretion when it determined that termination of their parental rights was in Sarah's best interests.

¶ 12 The trial court made the following findings of fact regarding the statutory criteria set forth in N.C.G.S. § 7B-1110(a):

> 82. The Court accepted into evidence the DSS court summary dispositional report, addendum, a letter from the child's psychiatrist, and the [guardian ad litem's] dispositional report.

83. [Sarah] is eleven years old . . . .

84. [Sarah] has been in Durham DSS custody for over two years.

85. The permanent plan for the child is adoption and termination of the parental rights of [respondents] will aid in the accomplishment of the permanent plan for the child.

86. Although [Sarah] is older and has behavioral challenges, she has also displayed the ability to bond and connect with her caretaker and has shown consistency in the last ten months with her current care provider. During that ten months, there has been no physical aggression against the caregiver, and supportive services have helped her find stability and reduce the number of revenge bouts she has at school. Her therapist has also identified the child's connections to her parents as holding her back from being able to develop. The child is continuing to receive mental health assistance and there is a likelihood that she could be adopted.

87. [Sarah] has shown the ability to bond with her current caretaker, who she has lived with for the last eight months. Her behaviors have dramatically improved and she has even asked if she could call the caretaker "Mom." While [Sarah] is not in a preadoptive placement, her current caretaker has committed to helping [Sarah] transfer to her forever home. [Sarah] approaches the caregiver for affection, seeks affirmations from her, and shows a desire to please her.

88. The foster parent has expressed that she is very fond of [Sarah] and sees potential in her. [Sarah] has communicated to the social worker that she enjoys time on the farm with the current foster parent and the foster parent's extended family who live beside the farm. During [Sarah's] time in the current placement, she has begun to open up regarding her anger and responsiveness to others when upset being what she has seen growing up. [Sarah] has been responsive to the structure and consistency provided in the

current home and seems somewhat trusting of the caregiver to discuss her feelings and act accordingly when redirected.

89. There is no denying that [Sarah] loves her parents and that her parents love [Sarah]. There are concerns about the parents' manipulation of [Sarah] in their feedback with her.

90. [Sarah] has an undeniable bond with her mother and father, as she has maintained a sense of loyalty to them since coming into care. Often times children who have experienced some form of trauma, feel a sense of loyalty as the control of the offender is all they know. This control has convinced them that the offender has their best interest at heart therefore making it easier for the offender to manipulate their actions and emotions. [Sarah's] experience with trauma is no different, being exposed to sexually inappropriate boundaries, inappropriate discipline, and grooming behaviors have somehow given her a sense of trust and normalcy in the home of her biological parents, thus creating negative attachments that are not conducive to her over all well-being and safety. [Sarah's] psychiatrist has expressed concern due to [Sarah's] emotional immaturity that she is more vulnerable and at risk for further mental health instability if she is not provided the opportunity to properly receive mental health treatment in a neutral setting. [Sarah] continues to demonstrate a level of guilt around the bond with her parents.

91. [Sarah's] bond with her parents inhibits her ability to trust. Trust issues have carried through the past behavior issues and prior 18 placements over the last three years.

92. [Sarah] desired to cut her hair and after months of refusal of her parents, she cut her hair herself. After receiving negative feedback from the parents regarding why she would cut her hair, [Sarah] reverted to stating that she changed her mind and no longer desired to cut her "locs" out because she did not want to upset her parents. She changed her decision after

> talking to her parents because she feared upsetting her parents, which shows guilt and loyalty.
>
> 93. [Sarah's] inability to work through her own trauma is a repetition of her guilt issues with her parents.
>
> 94. [Sarah] demonstrates a hesitancy to discuss her trauma or any event that occurred in her biological family's home prior to coming into care, stating "we don't talk about family business." Although the parent's support of [Sarah] seems appropriate in their communication to her, as they often encourage her to do her best and that she can become anything she desires when she grows up, the result ends with the parents discussing points of the case in how [Sarah's] current circumstance is not her fault but merely her response to all of the stress and trauma that the "system" and DSS has pressed upon her by placing her in foster care. This is a clear deflection of accountability of the parent's actions and that of [Sarah] over her negative behaviors. Although [Sarah] may have a bond with her parents, this bond is not healthy and hinders [Sarah's] ability to work through her trauma and grow into a healthy young adult.

To the extent respondents do not except to these findings, they are binding. *In re B.E.*, 375 N.C. at 745.

¶ 13 We begin by addressing respondent-father's exception to the statement in finding of fact 82 that the letter accepted into evidence at the dispositional hearing was prepared by Sarah's "psychiatrist"—which he contends "is simply not true." We agree with respondent-father that the only letter admitted into evidence for disposition was from Morrow Dowdle, a physician's assistant at Carolina Behavioral Health, who made clear in her letter that "my role in treating [Sarah] is limited to psychiatric medication management, and I do not claim to be a trained psychotherapist[.]" However, we conclude the trial court's mischaracterization of the letter's source is harmless. *See generally In re N.C.E.*, 379 N.C. 283, 2021-NCSC-141, ¶22 (applying harmless error standard to dispositional findings). Ms. Dowdle's letter states that Sarah had been her "patient" since 18 November 2019, and she was familiar with Sarah's "history, physical, and mental status examination" in addition to her psychiatric diagnoses and medications. Ms. Dowdle's observations and opinions about Sarah were based on "[her] own interactions with

[Sarah,] and reports by her foster parent and social worker" and are consistent with those of Sarah's psychiatrist and therapist, as described in DSS's written report to the court, as well as those of Sarah's guardian ad litem (GAL) and DSS social worker.

¶ 14 Respondent-mother challenges findings of fact 85–94, claiming they are based on "conjecture and erroneous, incomplete, misleading, and contradictory statements, and thus are not competent evidence to support the trial court's best interest determination." She argues the trial court abused its discretion in terminating her parental rights "when there was no plan for Sarah's adoption and serious obstacles existed to her successful placement." Respondent-father also challenges portions of these findings. He further argues that the only dispositional factor in N.C.G.S. § 7B-1110(a) weighing in favor of termination was the parent-child bond, and that the trial court therefore abused its discretion in determining it was in Sarah's best interests to terminate his rights. We consider each parent's evidentiary arguments in the context of the relevant statutory factor.

A. Age of the juvenile

¶ 15 Neither respondent challenges the trial court's finding that Sarah was eleven years old at the time of the termination hearing, but they both contend that Sarah's age should have weighed against terminating their parental rights. Respondent-mother argues Sarah's age was a possible barrier to adoption. Respondent-father adds that, because Sarah was nearly twelve at the time of the termination hearing and had expressed a preference against adoption, "the trial court knew that Sarah's age weighed against her likelihood of adoption." In her reply brief, respondent-mother adopts respondent-father's argument that the trial court's failure to consider Sarah's feelings on the matter of adoption amounts to an abuse of discretion. We disagree.

¶ 16 As a general matter, our adoption statutes require a child's consent to an adoption if she is at least twelve years of age. N.C.G.S. § 48-3-601(a)(1) (2019). Under N.C.G.S. § 48-3-603(b)(2) (2019), however, the trial court may waive this consent requirement "upon a finding that it is not in the best interest of the minor to require the consent." *In re C.B.*, 375 N.C. 556, 562 (2020) (quoting *In re M.A.*, 374 N.C. 865, 880 (2020)).

¶ 17 Here, the trial court sustained DSS's objection on relevance grounds when counsel for respondent-mother asked the social worker whether DSS would consider Sarah's feelings on adoption when she turned twelve. The court ruled the question irrelevant because "[w]hen [Sarah] turns twelve, this case will be over." Presuming, arguendo, that the court

should have permitted this line of inquiry, we conclude the ruling was harmless inasmuch as Sarah's potential objection "would not preclude [her] adoption." *In re M.A.*, 374 N.C. at 880.

B. Likelihood of adoption and whether termination will aid in the accomplishment of the permanent plan

¶ 18 Respondents raise several challenges to findings of fact 85–88 that combine arguments related to Sarah's likelihood of adoption with those disputing the trial court's finding that terminating their parental rights will aid in the accomplishment of her permanent plan. *See* N.C.G.S. § 7B-1110(a)(2), (3). We consider these arguments together.

¶ 19 Respondent-mother challenges finding of fact 85 on the ground that the evidence at the termination hearing "failed to show how the drastic step of severing the parental bond actually aided in accomplishing [Sarah's] adoption." She asserts that terminating her parental rights will bring Sarah no closer to a "forever home" given the continued mental health supports Sarah would need. Respondent-mother contends adoption would complicate the stability Sarah has found in her current foster home, noting the lack of evidence on the effect that severing the bond with her current foster mother would have on Sarah. Respondent-mother also points to the absence of evidence of an identified adoptive placement for Sarah, DSS's efforts to locate such a placement, and the possible barriers to adoption such as Sarah's age and behavioral problems.

¶ 20 While respondent-father does not expressly challenge the evidentiary support for finding of fact 85, he contends the finding fails to take account of Sarah's concurrent permanent plan of guardianship which, unlike adoption, would not require the termination of his parental rights. Respondent-mother also alludes to the trial court's failure to consider guardianship as an alternative to termination.

¶ 21 "Unquestionably, the termination of respondent[s'] parental rights was a necessary precondition of [the child's] adoption." *In re E.F.*, 375 N.C. 88, 93 (2020). Moreover, competent evidence supports the trial court's finding that termination would aid in accomplishing the permanent plan. The record confirms that adoption was Sarah's primary plan, and guardianship was the secondary plan. The GAL advised the court that Sarah's permanent plan had been "changed to [a]doption" on 10 July 2019. DSS's dispositional report also states that "[t]he permanent plan for the child currently is adoption with a secondary plan of guardianship[,]" and that "[t]ermination of parental rights will aid in the accomplishment of adoption/guardianship for the child." At the termination hearing, DSS social worker Tamika Jenkins testified that Sarah's permanent plan was

adoption and that terminating respondents' parental rights would aid in realizing the plan.

¶ 22 Respondent-father offers no authority for his assertion that N.C.G.S. § 7B-1110(a)(3) requires the trial court's order to address the secondary plan. Nor does he point to any conflicting evidence about whether terminating his parental rights would aid in achieving a guardianship for Sarah, such that written findings would have been required. *See In re G.G.M.*, 2021-NCSC-25 at ¶22.

¶ 23 We further find no evidence tending to show that it was in Sarah's best interests to appoint a guardian for her while leaving respondents' parental rights intact. The trial court established a primary permanent plan of adoption based on respondents' failure to acknowledge and remedy the issues that led to Sarah's removal from their home. Respondent-father argued at the hearing that the alternate permanent plan of guardianship without a termination of parental rights would allow respondents to "continue to be a positive influence on [Sarah's] life." However, the evidence showed that, despite the love Sarah and respondents had for each other, respondents were not a positive influence in her life, and adoption rather than guardianship was in her best interests. *See In re J.J.B.*, 374 N.C. 787, 795–96 (2020) (rejecting respondent-parents' argument that, "given the strong bond between themselves and [their children], the trial court should have considered other dispositional alternatives, such as guardianship").

¶ 24 Respondent-mother next challenges the portion of finding of fact 86 stating "there has been no physical aggression against [Sarah's] caregiver" during the ten months that preceded the 26 June 2020 termination hearing. We agree with respondent-mother that this finding is inconsistent with the evidence presented at the hearing and included in the record on appeal. The evidence showed Sarah had been in her current foster placement for ten months at the time of the hearing and had exhibited no physical aggression toward her foster mother since an incident on 4 October 2019—a period of almost nine months.[2] Accordingly, we disregard the extra month included in this finding for purposes of our review. *See In re J.M.J.-J.*, 374 N.C. 553, 559 (2020).

¶ 25 Respondent-mother also challenges the trial court's finding of a "likelihood that [Sarah] could be adopted" in finding of fact 86. Respondent-father does not deny the evidentiary support for the finding,

2. Likewise, the DSS disposition report dated 17 June 2020 states that "[i]n the last six months [Sarah] has maintained behavioral stability with the caregiver, as no new incidents have been reported of physical aggression against the caregiver."

but he characterizes the court's assessment of Sarah's adoptability as "[nothing] more than a mere hypothetical possibility" given Sarah's behavioral problems.

¶ 26 The finding that Sarah is likely to be adopted is supported by competent evidence. Ms. Jenkins attested to the likelihood of Sarah being adopted if she was provided continued stability and support, Ms. Jenkins acknowledged Sarah's struggles with behavioral issues, including an aggressive incident with her current foster mother, but noted improvements—mostly at home but also in school—as her living situation and mental health providers stabilized in the months leading up to the termination hearing. Ms. Jenkins also described Sarah's bond with her foster mother and how Sarah was opening up and seeking affection, something she had not done in her earlier placements. The written reports submitted by DSS and GAL also acknowledged Sarah's misbehaviors but noted they had improved during Sarah's placement with her current foster mother, with whom she had formed a positive and trusting attachment. *See generally In re M.A.*, 374 N.C. at 880 ("[T]he trial court's findings concerning the ability of the children to bond with their current caregivers did tend to support a conclusion that the children were adoptable given their ability to develop a bond with other human beings."). The foster mother expressed a willingness to serve as a "bridge" caretaker for Sarah until a pre-adoptive placement was identified. Moreover, the hearing testimony tended to show Sarah would receive additional resources for finding an adoptive placement once she was free for adoption. Therefore, it was within the trial court's discretion to view Sarah's likelihood of adoption as a fact favoring the termination of respondents' parental rights. *See In re N.C.E.*, 379 N.C. 283, 2021-NCSC-141 ¶30 (explaining that "it is left to the trial court's discretion to weigh the various competing factors in N.C.G.S. § 7B-1110(a) in arriving at its determination of the child's best interests").

¶ 27 Respondent-mother characterizes finding of fact 87 as "incomplete and misleading" in depicting Sarah's improved behavior in the months leading up to the termination hearing. She contends the finding "downplays the seriousness of Sarah's behavioral problems and does not account for the effect of the [COVID-19] pandemic, which . . . limited her contact with others." We find no merit to this claim. The trial court acknowledged Sarah's ongoing "behavioral challenges" in finding of fact 86. Finding 87 in no way suggests an end to these issues and is fully supported by Ms. Jenkins's testimony and the information found in the DSS and GAL's reports. Respondent-mother's conjecture about the effect of the pandemic on Sarah's behavior provides no basis to overturn the court's otherwise-supported finding.

¶ 28 Respondent-mother objects to finding of fact 87 because it states approvingly that Sarah "shows a desire to please her" foster mother, while subsequent findings describe Sarah's ongoing desire to please respondents as indicative of unresolved "guilt issues with her parents." What respondent-mother casts as an unexplained "contradiction" in the trial court's findings, we find to be a clear distinction drawn by the court between Sarah's newfound responsiveness to the care and nurturing she has received from her foster mother and the lingering effects of the manipulative, controlling relationship respondents cultivated with their daughter. We thus find no merit to respondent-mother's objections to finding of fact 87.

¶ 29 Respondent-mother next contends the account of Sarah's relationship with her current foster mother in finding of fact 88 "is not supported by competent evidence" to the extent it states Sarah "has begun to open up regarding her anger and responsiveness to others when upset *being what she has seen growing up*." (Emphasis added). We agree with respondent-mother that the italicized portion of this finding is unintelligible, likely resulting from a scrivener's error. Therefore, we disregard this portion of finding of fact 88. However, the remainder of this finding is supported by Ms. Jenkins's testimony and the written reports submitted by DSS and the GAL.

¶ 30 We find no merit to respondent-mother's argument that the DSS report does not constitute competent evidence because it "does not identify the sources for this information or provide any details to determine its reliability within the meaning of N.C.G.S. § 7B-1110(a)." *See In re R.D.*, 376 N.C. 244, 251 (2020) (concluding the GAL's report summarizing multiple interviews was properly admitted for dispositional purposes under N.C.G.S. § 7B-1110(a) even though neither the GAL nor the interviewees testified at the hearing). Respondents allowed the dispositional reports into evidence without objection and were free to cross-examine Ms. Jenkins, who signed the report, about her observations and sources.

¶ 31 In a footnote to his brief, respondent-father suggests that finding of fact 87 "overstates the level of commitment" shown by Sarah's foster mother to continue caring for Sarah until a pre-adoptive home is located. He takes issue with the trial court's statement that the foster mother "has committed to helping Sarah transfer to her forever home," when the DSS report says only that she "expressed a willingness to be a bridge caregiver for Sarah until a preadoptive placement can be identified." We find respondent-father's parsing of the trial court's language wholly unpersuasive. To the extent he contests the evidentiary basis for finding 87, we conclude competent evidence supports the finding.

C. The bond between the juvenile and the parents

¶ 32 Respondent-father claims "[t]here was no evidence that Sarah's therapist believes Sarah's relationship with her parents is 'holding her back' " as stated in finding of fact 86. We agree with respondent-father that the trial court appears to have wrongly attributed this opinion to Sarah's therapist. The evidence shows Sarah's psychiatrist, the GAL, and Ms. Dowdle shared the belief that Sarah's relationship with her parents was hindering her development. However, nothing in the record indicates that Sarah's therapist also voiced this opinion. Nevertheless, we conclude the trial court's misattribution was harmless, given that two of Sarah's mental health treatment providers and her GAL did express this view.

¶ 33 We further find no merit to respondent-father's suggestion that Ms. Dowdle's letter was the sole "evidentiary basis" for this portion of finding of fact 86. The opinions of Sarah's GAL and psychiatrist were conveyed in the written reports submitted to the court. Equally unfounded is respondent-father's speculation that the references to Sarah's psychiatrist in the DSS report were actually "mistaken reference[s] to the physician's assistant[,]" Ms. Dowdle. *See generally State v. Daughtry*, 340 N.C. 488, 517 (1995) ("We will not assume error 'when none appears on the record.' " (quoting *State v. Williams*, 274 N.C. 328, 333 (1968))). The fact that DSS conveyed the opinion of Sarah's psychiatrist in its written report—rather than obtaining a letter from the psychiatrist like the one provided by Ms. Dowdle—does not render the report unreliable for purposes of N.C.G.S. § 7B-1110(a). *See In re R.D.*, 376 N.C. at 251 (recognizing "the trial court possessed the discretion to determine that the [GAL's] report was, in fact, 'relevant, reliable, and necessary' to determine the best interests of [juvenile]" (quoting N.C.G.S. § 7B-1110(a))).

¶ 34 Both respondent-mother and respondent-father take exception to the trial court's description of their bond with Sarah in findings of fact 89 and 90. They specifically challenge the evidentiary support for the trial court's findings that "there 'are concerns about the parents' manipulation of [Sarah] in their feedback with her[,]' " that Sarah's bond with respondents reflects "negative attachments that are not conducive to her overall well-being and safety[,]"and that Sarah's "experience with trauma" is similar to other traumatized children and has left her with an unhealthy sense of loyalty toward her "offender[s,]" i.e., respondents.

¶ 35 Respondent-mother also asserts the remaining statements about the parent-child bond in findings of fact 91 through 94 are unsupported by the evidence and based on psychological speculation. She argues

"no trained psychologist or psychiatrist testified or submitted direct evidence in the case" and, therefore, there is no competent evidence to support the court's findings that (1) the parent-child bond inhibits Sarah's ability to trust; (2) Sarah changing her decision to cut her hair exhibited "guilt and loyalty" toward respondents; (3) Sarah's "inability to work through her own trauma is a repetition of her guilt issues" with respondents; and (4) respondents' "deflection of accountability" of their actions and Sarah's behavior "is not healthy and hinders [Sarah's] ability to work through her trauma and grow into a healthy young adult."

¶ 36 Respondent-father objects to finding of fact 90 on the ground that it "includes expert opinion" which the DSS social worker was not qualified to offer. He raises a similar challenge to the statement in finding of fact 91 that Sarah's "bond with her parents inhibits her ability to trust[,]" claiming the GAL who asserted as much in her written report was not qualified to render this opinion. More generally, respondent-father contends there was no evidence Sarah suffered from guilt arising from her bond with her parents as stated in findings of fact 90, 92, and 93.

¶ 37 Respondent-father also challenges the statement in finding of fact 94 that the parent-child "bond is not healthy and hinders [Sarah's] ability to work through her trauma and grow into a healthy young adult." He reiterates the position he raised in disputing finding 86 that the only the evidence for this finding was the letter written by Ms. Dowdle, the contents of which he believes were mischaracterized in the DSS report as the opinions of a psychiatrist. To the extent the DSS report conveyed the opinions of an unidentified psychiatrist rather than Ms. Dowdle, respondent-father contends this evidence amounts to "unreliable double hearsay."

¶ 38 Finally, respondents take issue with Ms. Jenkins's and the trial court's characterization of "[t]he hair-cutting incident" described in finding of fact 92. Ms. Jenkins cited this episode as an example of respondents' unhealthy manipulation of Sarah and her resulting feelings of guilt. Respondents insist it merely showed that they opposed Sarah's desire to change her hairstyle and expressed disapproval when she disregarded their wishes and cut her hair—what respondent-father deems "a mundane example of everyday parenting." Respondents also reiterate the argument raised by respondent-mother in her challenge to finding of fact 87, that the trial court portrayed Sarah's "desire to please her foster mother . . . [a]s positive" while treating her "desire to please her natural parents . . . as unhealthy[.]"

¶ 39 In their numerous challenges to the trial court's findings about the parent-child bond under N.C.G.S. § 7B-1110(a)(4), respondents tacitly

acknowledge the court's findings are consistent with Ms. Jenkins's hearing testimony, the contents of the reports prepared by DSS and the GAL, and the statements in Ms. Dowdle's letter. Despite respondents' strenuous arguments to the contrary, we conclude the findings are supported by some relevant and reliable evidence and are thus binding on appeal. *See In re B.E.*, 375 N.C. at 745.[3]

¶ 40 In her testimony for purposes of adjudication, Ms. Jenkins expressed concern about respondents' "negatively communicating to [Sarah]" at visitations. While encouraging Sarah to do better in school and in managing her behavior, respondent-father emphasized to Sarah that her behaviors were not her fault, and that DSS or "the system" was the cause of the family's problems. Respondent-father testified he always instructed Sarah not to trust strangers, including "anyone she has not been affiliated with or had been introduced solely from her parents to her"—although he denied telling Sarah not to trust DSS.

¶ 41 At disposition, Ms. Jenkins further attested to respondents instilling in Sarah an us-versus-them worldview, such that her cooperation with DSS or openness to others represented to Sarah a betrayal of her parents. Ms. Jenkins explained that Sarah's feelings of loyalty to respondents impeded her ability to develop relationships with others, as follows:

> [Sarah] has this mind set that, you know, "My family's business is my business. I can't get close to anyone. I shouldn't open up to let them get close to me." Our concern is her ability to be able to live a normal life open up and trust others and embrace peers, embrace friends, embrace those that are here, in addition to her parents and her history with her parents . . . .
>
> . . . I've seen this child begin to open up and, you know, seek nurturing, seek affirmations from caregivers, open up to even talk to me about some trainings that she has asked me not to tell her parents. And for [Sarah] that's big. She doesn't trust very easily. And so our concern is her being able to build on that. The — I don't want to say fear, but the continued concern of hers about what her parents think, and what are they going to say, I think hinders her from

3. As noted in our discussion to follow, pursuant to N.C.G.S. § 7B-1110(a), a trial court may "consider any evidence, including hearsay evidence . . . that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile."

> growing, hinders her from being open to be receptive to be loved. . . .

In her letter, Ms. Dowdle likewise expressed a belief that Sarah "will not be able to appropriately verbalize and process her trauma as long as she continues to interact with [respondents] . . . as she is likely to experience feelings of guilt and loyalty that are typical for a child of her age and circumstances, but are likely to hinder her progress."

¶ 42 The written reports submitted by DSS and the GAL include similar observations and opinions from Ms. Jenkins, the GAL, and Sarah's psychiatrist. Ms. Jenkins, who signed the DSS report, wrote that Sarah's exposure to traumatic experiences in the home, including "sexual inappropriate boundaries, inappropriate discipline, and grooming behaviors," led her to form "negative attachments [to respondents] that are not conducive to her overall well-being and safety." Her report describes Sarah as "continu[ing] to demonstrate a level of guilt around the bond with her parents." The GAL suggested that Sarah "may be resistant to the idea of adoption due to her sense of loyalty to her parents," which "has hindered her willingness to open up and trust others," as well as her "lack of understanding as to why she is in foster care[.]" Sarah's psychiatrist expressed "concern regarding [Sarah's] ability to fully process the idea of adoption and move forward with the chapter in her life, [due] to a fear of making a decision against her parents." The psychiatrist "conclude[d] that although [Sarah] may have a bond with her parents, this bond is not healthy and hinders [her] ability to work through her trauma and grow into a healthy young adult."

¶ 43 Findings of fact 89–94 are thus consistent with the evidence received by the trial court regarding Sarah's bond with respondents and the negative impact of the relationship on Sarah's emotional development and well-being. The evidence provides ample basis for the trial court's findings that Sarah continued to experience guilt arising from a distorted sense of loyalty to respondents, who refused to acknowledge the injurious environment they created for Sarah while she was in their care. The evidence also demonstrates the distinction between Sarah's unhealthy tendency to avoid upsetting respondents and her growing openness to and desire to please her foster mother, who "provides [Sarah] with a safe, nurturing, and structured loving and structured home environment."

¶ 44 As respondents did not object to the trial court's consideration of DSS's and the GAL's written reports for purposes of disposition, their current arguments regarding the sourcing or overall reliability of these reports are not properly before us. *See* N.C. R. App. P. 10(a)(1). As

previously noted, the dispositional statute expressly permits the trial court to "consider any evidence, *including hearsay evidence* . . . , that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile." N.C.G.S. § 7B-1110(a) (emphasis added). The trial court thus had the discretion to rely on the information contained in these reports—including the opinions of Sarah's DSS social worker and GAL, as well as those offered by Sarah's psychiatrist and therapist. *See In re R.D.*, 376 N.C. at 251 (concluding the GAL's report containing summaries of witness interviews, an analysis of the juvenile's needs, and the GAL's opinion that termination was in the juvenile's best interests was "directly related to the trial court's task during the dispositional stage" and was properly considered to "aid the trial court in determining the juvenile's best interests").

¶ 45 Ms. Jenkins's testimony also supports the account of Sarah's decision to cut her hair contained in finding of fact 92. Ms. Jenkins recalled Sarah expressing her intention to remove the locs from her hair "for weeks" to both Ms. Jenkins and her foster mother. Sarah was told respondents did not want her hair cut, but she proceeded to cut some of her locs out anyway, telling Ms. Jenkins that she did not want to have locs anymore. After a visit where respondents told Sarah that she would be "bald-headed" if she cut her locs, she became "very upset" at respondents' reaction, changed her mind, and said she would keep her locs. Ms. Jenkins saw this episode as an example of Sarah setting aside her own wishes in order to avoid upsetting respondents. Although respondents may disagree with Ms. Jenkins's view of this episode, we decline to second-guess the trial court's decision to credit the social worker's perspective, given her familiarity with the family and their interpersonal dynamics. *See generally In re T.N.H.*, 372 N.C. 403, 411 (2019) ("[I]t is the trial judge's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn from the testimony.").

¶ 46 Aside from the trial court's mistaken attribution of an opinion to Sarah's therapist in finding of fact 86, we conclude that competent evidence supports each of the findings about the parent-child bond challenged by respondents—specifically findings of fact 89–94. We further note that, in addition to the contested findings, the court made additional findings about the injurious environment respondents created in their home that led to Sarah's adjudication as neglected, as well as respondents' persistent refusal to acknowledge a problem requiring any changes if Sarah were returned to their care. The court also made findings on the unreliability of respondent-father's testimony and his lack

of credibility at the hearing. Each of these findings tends to show the deleterious nature of respondents' bond with Sarah.

D. The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent plan

¶ 47 Respondent-father emphasizes that the trial court's findings about Sarah's bond with her current foster mother do not speak to the dispositional factor in N.C.G.S. § 7B-1110(a)(5) because the placement was not expected to be permanent. However, as the court explained at the hearing, these findings were probative on the likelihood of Sarah's eventual adoption and were properly considered under N.C.G.S. § 7B-1110(a)(2). *See In re M.A.*, 374 N.C. at 880.

E. Determination of Sarah's best interests

¶ 48 Respondent-mother argues the trial court abused its discretion under N.C.G.S. § 7B-1110(a) in terminating her parental rights "when there was no plan for Sarah's adoption and serious obstacles existed to her successful placement." Respondent-father also objects to the trial court's "decision that turns Sarah into a legal orphan[.]" Though he acknowledges it is not this Court's prerogative to reweigh the factors, respondent-father spends considerable time arguing that the weight of the factors does not support termination.[4]

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4. We find no merit to respondent-father's assertion that "the General Assembly made a fundamental change" to the dispositional statute in 2005, "the magnitude [of which] cannot be overstated." According to respondent-father, "[b]efore the 2005 change, there existed in the Juvenile Code a preference in favor of terminating the parent-child relationship if the grounds to do so had been established[,]" and "[b]y explicitly removing that preference for termination, the General Assembly clearly indicated that it no longer believed such a preference was appropriate."

Prior to 2005, N.C.G.S. § 7B-1110 provided that, upon an adjudication of one or more grounds for terminating parental rights under N.C.G.S. § 7B-1111(a), "the court shall issue an order terminating the parental rights of such parent . . . unless the court shall further determine that the best interests of the juvenile require that the parental rights of the parent not be terminated." *In re Mitchell*, 148 N.C. App. 483, 492 (Hunter, J., dissenting in part) (quoting N.C.G.S. § 7B-1110(a) (1999)), *rev'd per curiam for reasons stated in dissenting opinion*, 356 N.C. 288 (2002). The General Assembly amended this language in 2005 to provide simply that, "[a]fter an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest." An Act to Amend the Juvenile Code to Expedite the Outcomes for Children and Families Involved in Welfare Cases and Appeals and to Limit the Appointment of Guardians ad Litem for Parents in Abuse, Neglect, and Dependency Proceedings, S.L. 2005-398, § 17, 2005 N.C. Sess. Laws 1455, 1463.

Contrary to respondent-father's contention, the pre-2005 language did not create a statutory "preference for termination." *See Mitchell*, 148 N.C. App. 483, 492–93 (Hunter, J.,

¶ 49 Respondents also cite the risk that Sarah will not be adopted as demonstrating the trial court's abuse of its discretion. Respondent-father contends the court's "decision . . . turns Sarah into a legal orphan" much like the termination order reversed by our Court of Appeals in *In re J.A.O.*, 166 N.C. App. 222 (2004). Respondent-mother likewise emphasizes that "there was no plan for Sarah's adoption" at the time the trial court chose to terminate her parental rights.

¶ 50 We find the instant case readily distinguishable from *In re J.A.O.* The Court of Appeals found that J.A.O. was "a troubled teenager with a woefully insufficient support system" who had been shuffled through multiple treatment centers due to his significant physical, mental, and behavioral disorders. *Id.* at 227. His mother was "connected to and interested in" him, and she provided a stabilizing influence in his life. *Id.* at 227–28. She had also "made reasonable progress to correct the conditions that led to the petition to terminate her parental rights." *Id.* at 224. Under these circumstances and given the "remote chance" of sixteen-year-old J.A.O.'s adoption, the trial court was held to have abused its discretion by disregarding the recommendation of the GAL and terminating the mother's parental rights. *Id.*

¶ 51 Here, while Sarah had been in multiple placements due to her behavior, she had shown real improvement after finding stability in her current foster home, a factor that increased the likelihood of her adoption. Moreover, as discussed above, the evidence showed respondents refused to acknowledge that the reasons for Sarah's removal from their home were problems to be corrected, and made no progress towards correcting those conditions. Finally, rather than providing a stabilizing influence, Sarah's relationship with respondent-parents negatively affected her development.

¶ 52 To the extent respondents ask this Court to undertake our own assessment of the record evidence and to substitute our weighing of the relevant statutory criteria for that of the trial court, we decline to do so. "[S]uch an approach would be inconsistent with the applicable standard of review, which focuses upon whether the trial court's dispositional decision constitutes an abuse of discretion rather than upon the manner in which the reviewing court would weigh the evidence were it the finder

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dissenting in part) (noting "there is no burden of proof at disposition" and rejecting the respondent's argument that the trial court improperly required him to prove that terminating his parental rights was not in the child's best interest (citation omitted)); *see also In re Blackburn*, 142 N.C. App. 607, 613 (2001) (concluding the statute created no presumption in favor of terminating parental rights).

of fact." *In re I.N.C.*, 374 N.C. 542, 551 (2020). A careful review of the dispositional findings shows the trial court considered all of the relevant statutory criteria in N.C.G.S. § 7B-1110(a) and made a reasoned determination that termination of respondents' parental rights in Sarah would be in her best interests.

III. Conclusion

¶ 53 The trial court's findings demonstrate that it considered the dispositional factors set forth in N.C.G.S. § 7B-1110(a) and "performed a reasoned analysis weighing those factors." *In re Z.A.M.*, 374 N.C. at 101. "Because the trial court made sufficient dispositional findings and performed the proper analysis of the dispositional factors," *id.*, we conclude that the trial court did not abuse its discretion in concluding that termination of respondents' parental rights was in Sarah's best interests. Accordingly, we affirm the trial court's order.

AFFIRMED.

IN THE MATTER OF T.B.

No. 149A21

Filed 18 March 2022

1. Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect—failure to address domestic violence in home

The trial court properly terminated a mother's parental rights in her daughter on the ground of neglect based on a determination that a likelihood of future neglect existed if the child were returned to the mother's care. The court's findings showed that the mother had denied at least two reported incidents of domestic violence by the child's father; that the child's initial neglect adjudication resulted from the mother's tendency to deny or minimize the domestic violence issues at home; and that the mother made minimal progress in addressing the domestic violence component of her case plan, continued her relationship with the father until just months before the termination hearing, made few efforts to contact or develop a relationship with the child, and lacked appropriate housing.

IN RE T.B.

[380 N.C. 807, 2022-NCSC-43]

2. Termination of Parental Rights—no-merit brief—multiple grounds for termination

The termination of a father's parental rights in his daughter on multiple grounds was affirmed where his counsel filed a no-merit brief and where the termination order was supported by the evidence and based on proper legal grounds.

Appeal pursuant to N.C.G.S. § 7B-1001(a1)(1) (2019) from an order entered on 12 January 2021 by Judge Donald R. Cureton, Jr., in the District Court, Mecklenburg County. This matter was calendared in the Supreme Court on 18 February 2021 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Laura Kaiser Anderson for petitioner-appellee Mecklenburg County Department of Social Services.

Chelsea K. Barnes for appellee Guardian ad Litem.

Anné C. Wright for respondent-appellant mother.

Peter Wood for respondent-appellant father.

HUDSON, Justice.

¶ 1 Respondent-mother and respondent-father appeal from the trial court's order terminating their parental rights to their minor child T.B. (Tammy).[1] Upon review, we affirm.

I. Factual and Procedural Background

¶ 2 On 17 January 2019, Mecklenburg County Department of Social Services Youth and Family Services Division (YFS) filed a juvenile petition alleging that one-year-old Tammy was neglected and dependent, obtained nonsecure custody of Tammy, and moved her to a foster placement. The petition alleged YFS received a referral reporting that police were called to the family's home on 9 January 2019 in response to a domestic violence incident that occurred in Tammy's presence, resulting in respondent-father's arrest. Respondent-father was combative with police and was charged with assault on a female, injury to

1. A pseudonym is used to protect the identity of the juvenile and for ease of reading.

personal property, possession of marijuana, resisting arrest, and malicious conduct by a prisoner. Respondent-mother told a magistrate that the charges related to her were fabricated and paid a bondsman to secure respondent-father's release on 10 January 2019.

¶ 3 The petition further alleged that YFS investigators spoke with respondent-mother and then met with each parent separately on 11 January 2019. Respondents denied engaging in domestic violence and claimed a maternal aunt assaulted respondent-mother on 9 January 2019. However, respondent-mother admitted that respondent-father sometimes got jealous when she spoke to other men and told YFS she would have left respondent-father previously if she had more family support. Respondent-father acknowledged possible mental health needs. He also indicated he was previously involved with domestic violence treatment through NOVA but minimized any continued domestic violence between him and respondent-mother. Although respondent-mother indicated she and respondent-father were still living together as a couple, respondent-father told YFS that he was willing to leave the home as had been suggested by his probation officer. Both parents also admitted to smoking marijuana.

¶ 4 As a result of their meetings with YFS, respondents agreed to submit to random drug screens and substance abuse assessments by 15 January 2019. Respondent-father agreed to go to Monarch for a mental health assessment by 15 January 2019, and respondent-mother agreed to contact the YFS domestic violence liaison by 15 January 2019. However, at the time the petition was filed, neither respondent had followed through with these agreements.

¶ 5 YFS further alleged that other witnesses reported ongoing substance abuse and domestic violence between respondents and concerns about respondent-father's temper, prior domestic violence, and respondent-father's excessive control over respondent-mother. The family's child protective services history included a referral for domestic violence and substance abuse after a similar prior incident.

¶ 6 Respondents participated in mediation on 14 February 2019 and agreed to certain facts consistent with the petition's allegations.

¶ 7 After a hearing on 11 March 2019, the trial court entered an order adjudicating Tammy a neglected and dependent juvenile on 25 April 2019. In addition to adopting the stipulated facts, the court made findings based on evidence of respondent-father's criminal record, which included a conviction of assault on a government official and a term of probation in which he was twice terminated from a required batterer's

intervention program—once for excessive absences and once for a new assault charge. The court specifically found that respondents' "intimate partner violence and substance abuse" led to Tammy's adjudication, and ordered respondents to comply with their mediated family services agreement (FSA). The FSA required respondent-mother to attend domestic violence classes, participate in substance abuse services recommended from her assessment, sign releases for YFS to monitor her progress, and work with YFS to identify supportive individuals and reconnect with family. The FSA required respondent-father to avoid domestic disputes and reengage in NOVA classes once eligible, attend recommended substance abuse services and submit to random drug screens, complete a mental health assessment and comply with recommended services, and sign releases for YFS to monitor his progress. The court ordered the child to remain in YFS custody. Respondents were ordered to attend separate supervised visitations with Tammy a minimum of two times per week.

¶ 8 Following a review hearing on 28 May 2019, the court entered an order on 8 July 2019 finding respondents were making progress on the substance abuse component of their FSA. Respondent-father had finished substance abuse classes with no further recommendations and submitted three negative drug screens. Respondent-mother was expected to complete substance abuse classes at the end of May and had submitted negative drug screens. However, the court's findings demonstrated minimal progress by respondents in addressing domestic violence, as respondent-father was unable to participate in domestic violence programs because of his pending criminal charges, and respondent-mother had not meaningfully engaged in counseling. Respondent-mother had been injured at least twice in domestic violence incidents and then either recanted or minimized the events in which she was injured. At the review hearing, respondent-mother stated that nothing was wrong in the home prior to Tammy's removal, which the court viewed as demonstrating her lack of insight into the removal conditions.

¶ 9 The trial court held a permanency planning hearing on 11 September 2019. In an order entered on 21 October 2019, the court established a primary permanent plan for Tammy of adoption with a secondary plan of reunification with respondent-mother, citing respondents' failure to address their domestic violence issues. Specifically, the court found respondent-father had been charged with another act of domestic violence against respondent-mother on 15 August 2019 and was terminated from the NOVA program for the fourth time. The court expressed its concern about respondent-father's continued control over respondent-mother, who was pregnant, and asked "whether the mother

is at a point (or will ever be at a point) where she can be safe and free from violence and abuse." The court found respondents were "acting in a manner that is inconsistent with the health or safety of the juvenile" and "have failed to address any of the removal conditions in any meaningful way . . . [or] demonstrated that they would be able to meet the juvenile's basic needs."

¶ 10 In a permanency planning order entered on 2 January 2020, the court trial found that respondents were not actively participating in their FSA or cooperating with YFS or the guardian ad litem (GAL), and they had failed to address the removal conditions in any meaningful way. The court found that respondent-father appeared to lack any insight into his past violence and had yet to fully engage in any type of batterer's intervention or anger management program. Respondent-mother was due to give birth to another child within weeks of the hearing but had not sought prenatal care. Although there was some evidence that respondent-mother had separated from respondent-father and had engaged in some domestic violence services, it was unclear how much insight she had gained. The court further found that respondent-mother had not had any contact with Tammy since May 2019, despite YFS "encourag[ing her] to visit and bond with the child[.]" Due to respondents' lack of progress, the court ordered YFS to file a petition to terminate parental rights within 60 days.

¶ 11 On 4 February 2020, YFS filed a motion to terminate respondents' parental rights in Tammy. In its motion, YFS alleged that grounds existed to terminate both parents' parental rights for neglect pursuant to N.C.G.S. § 7B-1111(a)(1) (2021), failure to make reasonable progress pursuant to N.C.G.S. § 7B-1111(a)(2) (2021), failure to pay a reasonable portion of Tammy's cost of care pursuant to N.C.G.S. § 7B-1111(a)(3) (2021), and dependency pursuant to N.C.G.S. § 7B-1111(a)(6) (2021).

¶ 12 The termination motion was heard on 12 November 2020. On 12 January 2021, the trial court entered an order terminating respondents' parental rights in Tammy. The court concluded that all four of the grounds alleged in the motion existed to terminate both respondents' parental rights, and that it was in Tammy's best interests to terminate their rights. *See* N.C.G.S. § 7B-1110(a) (2021). Both respondents appealed.

II. Analysis

A. Respondent-Mother's Appeal

¶ 13 **[1]** On appeal, respondent-mother challenges the trial court's adjudication of the existence of grounds to terminate her parental rights.

> When reviewing the trial court's adjudication of grounds for termination, we examine whether the court's findings of fact are supported by clear, cogent and convincing evidence and whether the findings support the conclusions of law. Any unchallenged findings are deemed supported by competent evidence and are binding on appeal. The trial court's conclusions of law are reviewed de novo.

In re Z.G.J., 378 N.C. 500, 2021-NCSC-102, ¶ 24 (cleaned up). "[A]n adjudication of any single ground in N.C.G.S. § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395 (2019).

¶ 14 A trial court may terminate parental rights pursuant to N.C.G.S. § 7B-1111(a)(1) for neglect if it determines the parent has neglected the juvenile within the meaning of N.C.G.S. § 7B-101. A neglected juvenile is defined, in relevant part, as one "whose parent, guardian, custodian, or caretaker does not provide proper care, supervision, or discipline; . . . or who lives in an environment injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2021).

> Termination of parental rights based upon this statutory ground requires a showing of neglect at the time of the termination hearing or, if the child has been separated from the parent for a long period of time, there must be a showing of a likelihood of future neglect by the parent. When determining whether such future neglect is likely, the district court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing.

In re R.L.D., 375 N.C. 838, 841 (2020) (cleaned up). "A parent's failure to make progress in completing a case plan is indicative of a likelihood of future neglect." *In re M.A.*, 374 N.C. 865, 870 (2020) (quoting *In re M.J.S.M.*, 257 N.C. App. 633, 637 (2018)). "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child *at the time of the termination proceeding*." *In re Z.G.J.*, 378 N.C. 500, 2021-NCSC-102, ¶ 26 (quoting *In re Ballard*, 311 N.C. 708, 715 (1984)).

¶ 15 The trial court concluded that grounds existed to terminate respondent-mother's parental rights for neglect based on Tammy's prior adjudication as a neglected juvenile and its determination that "there

remains a likelihood of repetition of such neglect." In addition to describing the circumstances leading to Tammy's prior adjudication as neglected and dependent and the requirements of respondents' FSAs, the court made findings about respondent-mother's progress in addressing the issue of domestic violence, her failure to visit and contact Tammy, and her living situation at the time of the termination hearing.

¶ 16 The findings show that respondent-mother remained in a relationship with respondent-father even after he inflicted additional violence upon her and their unborn child in August 2019, which resulted in criminal charges against respondent-father. Respondent-mother did not cooperate when she was served with a subpoena to appear for respondent-father's criminal court date, and the charges against respondent-father were dismissed. The court found that respondent-mother availed herself of domestic violence services through the Women's Commission and completed group classes in January 2020. However, after respondent-father answered a YFS phone call made to respondent-mother in January 2020 following the birth of Tammy's sister, the trial court ordered respondent-mother to return to the Women's Commission to complete additional domestic violence treatment because she lacked the insight needed to end the relationship and provide a safe environment for herself and her children. The court found that respondent-mother remained in a romantic relationship with respondent-father until August 2020, just months before the November 2020 termination hearing, and that respondent-father showed the social worker text messages in October 2020 "confirming that he was still in a relationship with [respondent-]mother." The trial court's findings show that respondent-mother had a history of recanting allegations against respondent-father, and the court found respondent-mother's denial of a relationship with respondent-father in the summer of 2020 was not believable. The trial court's findings additionally show that respondent-mother had only contacted the Women's Commission to reengage in services approximately two weeks before the termination hearing, and that she was scheduled to start those services after the termination hearing.

¶ 17 In addition to the findings related to domestic violence, the trial court found that respondent-mother's last contact with Tammy was in May 2019, respondent-mother had not sent cards or gifts to Tammy, respondent-mother had contacted the foster parents "a few times" between August 2019 and February 2020 to check on Tammy but had not requested visits despite being allowed to do so, and respondent-mother had not requested a court hearing to address visitation after the YFS social worker expressed concern about respondent-mother's request to

see Tammy after the termination motion was filed on 4 February 2020. Lastly, the trial court found that respondent-mother was living in the same bedroom as her mother in a four-bedroom apartment designed for college students, which they shared with other residents. The court's findings show respondent-mother acknowledged Tammy could not live in the apartment due to the lack of space but indicate she did not have imminent plans to move out of the apartment.

¶ 18 On appeal, respondent-mother only challenges findings regarding her relationship with respondent-father and her denial of past domestic violence.[2] She first challenges findings of fact 36 and 38 about her continued relationship with respondent-father until August 2020 and the court's determination that her denial of the relationship was not believable. Respondent-mother argues that the evidence of a continued relationship in August 2020 was equivocal and therefore did not support the findings. We disagree.

¶ 19 At the termination hearing, the social worker testified that respondent-father met with YFS in October 2020 and confirmed he was in a relationship with respondent-mother "until about August of 2020" based on dated messages with respondent-mother and pictures of the parents at the beach together in July 2020. Respondent-father also testified at the hearing that he and respondent-mother were together until August 2020, explaining that respondent-mother was living with her mother when they took the beach trip during the summer, he was "trying to patch things up[,]" and they split up at the end of August 2020. Respondent-mother, however, testified her relationship with respondent-father ended before August 2020. Although she could not precisely recall when it ended, she stated "[i]t ended a long time ago." In reviewing this evidence, we are mindful that it is not this Court's role to reweigh the evidence. *See In re A.U.D.*, 373 N.C. 3, 12 (2019) (noting that the Court "lacks the authority to reweigh the evidence that was before the trial court"). "[I]t is the trial judge's duty to consider all the evidence, pass upon the credibility of the witnesses, and determine the reasonable inferences to be drawn from the testimony." *In re T.N.H.*, 372 N.C. 403, 411 (2019) (citing *In re D.L.W.*, 368 N.C. 835, 843 (2016)). "A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence

2. Respondent-mother asserts her challenges to the trial court's findings in her argument contesting the adjudication of grounds for termination under N.C.G.S. § 7B-1111(a)(2). Because the findings are also relevant for termination pursuant to N.C.G.S. § 7B-1111(a)(1), we address the challenged findings.

that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372, 379 (2019). Under these standards, we hold that the testimony by the social worker and respondent-father support the trial court's finding that respondent-mother continued in a relationship with respondent-father until August 2020. Respondent-mother's argument challenging the findings is overruled.

¶ 20 Respondent-mother also challenges finding of fact 37, which provides that "[o]n two other occasions [respondent-]mother told police [respondent-]father hit or assaulted her. Afterwards, she told [the social worker] and the court that what the police reported is not correct." She contends the finding is not supported by any evidence and is unhelpful as there is no finding as to when the events described took place. To the extent the trial court found that it was respondent-mother who reported domestic violence to police, we agree that the finding is not supported by the record evidence and disregard the finding. *See In re L.H.*, 378 N.C. 625, 2021-NCSC-110, ¶ 14 (disregarding factual findings not supported by the record). However, there is evidence of at least two instances of domestic violence between respondents that were reported to police, and evidence that respondent-mother denied the domestic violence. Specifically, the evidence shows respondent-mother denied that respondent-father was involved in the incident that resulted in the filing of the juvenile petition in January 2019, and the trial court later found in the 8 July 2019 review hearing order that "the [respondent-mother] has been injured at least twice and then recanted/minimized the events where she was injured[,]" adding that "[h]er inability to fully acknowledge the scope/severity of abusive actions led to the removal." We uphold finding of fact 37 to the extent the trial court found that respondent-mother denied reported instances of domestic violence. We also agree with YFS that the finding is relevant to the determination of a likelihood of future neglect as it demonstrates respondent-mother's lack of insight and propensity to minimize domestic violence, a concern echoed throughout the trial court's findings.

¶ 21 Respondent-mother does not specifically challenge any other findings of fact. The trial court's unchallenged findings are binding on appeal. *See Z.G.J.*, 378 N.C. 500, 2021-NCSC-102, ¶ 24.

¶ 22 Respondent-mother next acknowledges that Tammy was previously adjudicated neglected but argues that "there was not a sufficient showing of a likelihood of future neglect to uphold termination of [her] parental rights on this ground." Rather, she contends that she made substantial progress on her case plan such that the original removal conditions of

substance abuse and domestic violence were not likely to cause a repetition of neglect.

¶ 23 Respondent-mother first addresses substance abuse. She asserts that she had completed a substance abuse course, she was engaged in counseling that included a substance abuse component at the time of the termination hearing, and there was no evidence or findings to show that substance abuse rendered her unable to parent Tammy. However, we see no indication that the trial court relied upon concerns about ongoing substance abuse by respondent-mother as the basis for adjudicating grounds for terminating her parental rights. The court's few findings on the issue credit respondent-mother with "a negative drug screen and breathalyzer sample" the day before the termination hearing and note she was "enrolled in counseling through Family First" and "has not provided a positive drug screen since July 2020." While we agree with respondent-mother that these findings do not tend to show a likelihood she would neglect Tammy in the future, their presence in the trial court's order does not undermine its adjudication, which was based on other findings.

¶ 24 Respondent-mother also argues that "[d]omestic violence was also not likely to lead to further neglect" because the last incident of domestic violence occurred more than a year before the termination hearing, she had not been in a relationship with respondent-father "for at least several months[,]" and she believed that she had learned from domestic violence classes and had acknowledged that Tammy's exposure to domestic violence was traumatizing. She likens her case to *In re K.L.T.*, 374 N.C. 826 (2020). We are not persuaded.

¶ 25 In *K.L.T.*, this Court reversed the termination of a mother's parental rights on grounds of neglect, distinguishing the case from "past cases involving families with a history of domestic violence, [in which] this Court has determined that a continued likelihood of future neglect is present when the parent continues to participate in domestic violence, fails to truly engage with her counseling or therapy requirements, or fails to break off the relationship with the abusive partner." *Id.* at 846. The mother in *K.L.T.* moved out of the home and separated from the child's abusive father soon after the child's removal from the home, obtained and renewed a DVPO against the father, divorced and ceased all contact with the father, avoided any further incidents of domestic violence after the separation, fully completed all therapy and counseling courses required by her case plan, and devoted hours to writing a detailed safety plan in anticipation of regaining custody of her child. *Id.* at 829, 832, 846–47. Additionally, the mother had acquired housing that was

appropriate for the child, consistently visited with the child, and made efforts to be involved in the child's life. *Id.* at 832. It was the combination of all the mother's progress that led this Court to hold "[t]he trial court's finding of a likelihood of repetition of neglect in the future crosse[d] the line separating a reasonable inference from mere speculation." *Id.* at 847.

¶ 26 The facts here are distinguishable from *K.L.T.* The evidence and findings here show repeated domestic violence and respondent-mother's tendency to minimize it. Respondent-mother did not immediately end the relationship and separate from respondent-father upon the initial adjudication but instead continued the relationship for much of the case despite continued domestic violence and her completion of domestic violence classes. Although the trial court's findings indicate that respondent-mother's relationship with respondent-father had ended several months before the termination hearing, respondent-mother had not completed the required domestic violence treatment. The findings show that respondent-mother was willing to reengage in treatment, "wants to be a role model for her children[,] and believes the [domestic violence] classes will help her learn not to make the same mistakes." However, respondent-mother had only contacted the Women's Commission weeks before the termination hearing to reengage in additional domestic violence treatment required by the court to address its concern that she lacked the insight needed to provide a safe environment for her children, and she had not yet started that treatment at the time of the termination hearing. The trial court's findings on the history of domestic violence and respondent-mother's failure to complete the additional treatment to gain insight needed to provide a safe home for Tammy support the conclusion that there was a likelihood of repetition of neglect. *See In re D.M.*, 375 N.C. 761, 779 (2020) (upholding a conclusion that there was a likelihood of future neglect due to domestic violence despite no recent reported incidents because there was an extensive history of domestic violence, and the mother failed to complete recommended domestic violence counseling and lacked meaningful insight about the impact of domestic violence on the children).

¶ 27 Furthermore, the trial court's findings show that respondent-mother had not visited or contacted Tammy since May 2019 (a period of eighteen months at the time of the termination hearing), had not requested visitation from the foster parents despite being allowed to do so, and had not sent Tammy any cards or gifts. Respondent-mother requested to see Tammy following the filing of the termination motion, but she took no further action when YFS responded with concern that she had

not seen the child in over a year. We have recognized a parent's "pattern of inconsistent contact and lack of interest" in a child as indicative of a likelihood of future neglect for purposes of N.C.G.S. § 7B-1111(a)(1). *In re W.K.*, 379 N.C. 331, 2021-NCSC-146, ¶ 10; *see also In re M.Y.P.*, 378 N.C. 667, 2021-NCSC-113, ¶ 20 (considering a parent's inconsistent visitation among the factors that supported trial court's determination that there was a high probability of repetition of neglect). Respondent-mother also lacked housing appropriate for Tammy at the time of the hearing.

¶ 28 We conclude that the trial court's findings related to ongoing concerns with respondent-mother's progress in addressing domestic violence, together with the unchallenged findings that respondent-mother made minimal efforts to remain in contact and develop a relationship with Tammy and lacked appropriate housing, support the trial court's determination that there is a likelihood of repetition of neglect. Combined with Tammy's prior adjudication as a neglected juvenile, this likelihood of further neglect if the child were returned to respondent-mother's custody supports the trial court's conclusion that grounds existed to terminate respondent-mother's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1).

¶ 29 Having determined the trial court did not err in adjudicating the existence of grounds for termination of respondent-mother's parental rights in Tammy, and because respondent-mother does not challenge the trial court's determination that termination of her parental rights was in Tammy's best interests, we affirm the trial court's order terminating respondent-mother's parental rights.

B. Respondent-Father's Appeal

¶ 30 **[2]** Counsel for respondent-father has filed a no-merit brief on his behalf pursuant to N.C. R. App. P. 3.1(e). There, counsel identified issues that could arguably support an appeal but explained why he found that those issues either lacked merit or would not alter the ultimate result. Counsel also advised respondent-father of his right to file *pro se* written arguments on his own behalf and provided him with the documents necessary to do so. Respondent-father has not submitted any written arguments to this Court.

¶ 31 We have independently reviewed the issues identified in the no-merit brief submitted by respondent-father's counsel under Rule 3.1(e). *In re L.E.M.*, 372 N.C. 396, 402 (2019). Upon careful consideration of those issues in light of the entire record, we are satisfied that the trial court's 12 January 2021 order terminating respondent-father's

parental rights in Tammy was supported by competent evidence and based on proper legal grounds. Accordingly, we affirm the termination of respondent-father's parental rights in Tammy.

III. Conclusion

¶ 32 The trial court's 12 January 2021 order terminating respondent-mother's and respondent-father's parental rights in Tammy is affirmed.

AFFIRMED.

IN THE MATTER OF V.S. AND A.S.

No. 121PA21

Filed 18 March 2022

Termination of Parental Rights—grounds for termination—neglect—likelihood of future neglect—parent's cognitive limitations

The trial court did not err by determining that a mother's parental rights in her children were subject to termination on the grounds of neglect where the unchallenged findings of fact showed no changes in circumstance that would support a conclusion that the mother was unlikely to neglect her children in the future. Rather, the mother's significant cognitive limitations prevented her from taking basic care of even herself, and she lacked the ability to comprehend the past neglect or how to care for her children going forward; furthermore, the suitability of other family members as caregivers was irrelevant where the mother was unfit to care for the children.

On writ of certiorari pursuant to N.C.G.S. § 7A-32(b) from orders entered on 28 September 2020, 29 October 2020, and 4 March 2021 by Judge W. Turner Stephenson III in District Court, Bertie County. This matter was calendared for argument in the Supreme Court on 18 February 2022 but determined on the record and briefs without oral argument pursuant to Rule 30(f) of the North Carolina Rules of Appellate Procedure.

Miller & Audino, LLP, by Jay Anthony Audino, for petitioner-appellee Beaufort County Department of Social Services.

Michelle FormyDuval Lynch for appellee Guardian ad Litem.

Wendy C. Sotolongo, Parent Defender, and Annick Lenoir-Peek, Deputy Parent Defender, for respondent-appellant mother.

BARRINGER, Justice.

¶ 1 Respondent appeals from orders terminating her parental rights in the minor children V.S. and A.S. (Vincent and Ava),[1] arguing that the trial court erred in determining that there was a likelihood of a repetition of neglect. After careful review, we hold that the trial court did not err in determining that there was a likelihood of a repetition of neglect. Accordingly, we affirm the trial court's orders terminating respondent's parental rights.

I. Factual and Procedural Background

¶ 2 Bertie County Department of Social Services (DSS)[2] initiated this matter on 20 June 2017 by filing petitions alleging Vincent and Ava to be neglected and dependent juveniles. The trial court adjudicated the children neglected juveniles, finding that respondent "created an unsafe living environment for her children" and lacked understanding regarding everyday functioning and parenting. Under respondent's care, Vincent and Ava had been exposed to pornography and domestic violence, had been kept in "filthy" homes, had unstable living arrangements, and had poor hygiene. At the time of the petition, Vincent and Ava were residing with respondent in a home with "maggots under the carpet resulting from a failure to dispose of garbage." The trial court also adjudicated respondent to be mentally incompetent and appointed her a guardian ad litem.

¶ 3 After a permanency planning hearing on 5 February 2019, the trial court relieved DSS of reunification efforts, finding that the permanent plan of reunification could not be implemented within the next six months because of Vincent's and Ava's therapeutic and medical needs as well as respondent's failure to participate in her case plan or address her situation such that the children could return to her care. In an order filed in July 2019, the trial court ordered that the primary plan be adoption, finding that reunification in the next six months was still "not possible"

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1. Pseudonyms are used in this opinion to protect the juveniles' identities.

2. On 2 April 2019, the trial court allowed Bertie County Department of Social Services's motion to substitute Beaufort County Department of Social Services for Bertie County Department of Social Services as a party of interest.

due to respondent's inability to acquire independent living skills for her own daily functioning and her limited cognitive functioning. DSS moved to terminate parental rights on 5 November 2019.

¶ 4 At the termination-of-parental-rights hearing, DSS objected to certain testimony by two of respondent's witnesses, which the trial court sustained. Respondent made an offer of proof by having each witness, on the record, answer the same questions to which the trial court had previously sustained objections. After the hearing, the trial court entered an order adjudicating that grounds existed to terminate respondent's parental rights to Vincent and Ava based on neglect, N.C.G.S. § 7B-1111(a)(1), and dependency, N.C.G.S. § 7B-1111(a)(6).

¶ 5 Respondent filed a notice of appeal on 24 November 2020, which was signed by respondent and her attorney. In an order entered on 4 March 2021, the trial court dismissed respondent's notice of appeal for failure to have her guardian ad litem sign the notice of appeal. On 7 April 2021, respondent filed a petition for writ of certiorari requesting reinstatement of the appeal. This Court, in a 9 June 2021 special order, allowed the petition for writ of certiorari.

II. Analysis

A. Standard of Review

¶ 6 The North Carolina Juvenile Code sets out a two-step process for termination of parental rights: an adjudicatory stage and a dispositional stage. N.C.G.S. §§ 7B-1109 to -1110 (2021). At the adjudicatory stage, the trial court takes evidence, finds facts, and adjudicates the existence or nonexistence of the grounds for termination set forth in N.C.G.S. § 7B-1111. N.C.G.S. § 7B-1109(e). If the trial court adjudicates that one or more grounds for termination exist, the trial court then proceeds to the dispositional stage where it determines whether terminating the parent's rights is in the juvenile's best interests. N.C.G.S. § 7B-1110(a).

¶ 7 Appellate courts review a trial court's adjudication pursuant to N.C.G.S. § 7B-1111(a) to determine whether the findings are supported by clear, cogent, and convincing evidence and whether the findings support the conclusions of law. *In re E.H.P.*, 372 N.C. 388, 392 (2019). In doing so, we limit our review to "only those findings necessary to support the trial court's determination that grounds existed to terminate respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407 (2019). "A trial court's finding of fact that is supported by clear, cogent, and convincing evidence is deemed conclusive even if the record contains evidence that would support a contrary finding." *In re B.O.A.*, 372 N.C. 372,

379 (2019). Further, "[f]indings of fact not challenged by respondent are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. at 407. We review the trial court's conclusions of law de novo. *In re C.B.C.*, 373 N.C. 16, 19 (2019).

B. Neglect

¶ 8 The trial court concluded that grounds existed to terminate respondent's parental rights to Vincent and Ava for neglect under N.C.G.S. § 7B-1111(a)(1). The Juvenile Code authorizes the trial court to terminate parental rights if "[t]he parent has abused or neglected the juvenile" as defined in N.C.G.S. § 7B-101. N.C.G.S. § 7B-1111(a)(1) (2021). A neglected juvenile is defined, in pertinent part for this matter, as a juvenile "whose parent . . . [d]oes not provide proper care, supervision, or discipline . . . [or c]reates or allows to be created a living environment that is injurious to the juvenile's welfare." N.C.G.S. § 7B-101(15) (2021).

¶ 9 "[I]f the child has been separated from the parent for a long period of time, there must be a showing of past neglect and a likelihood of future neglect by the parent." *In re D.L.W.*, 368 N.C. 835, 843 (2016). "When determining whether such future neglect is likely, the [trial] court must consider evidence of changed circumstances occurring between the period of past neglect and the time of the termination hearing." *In re Z.V.A.*, 373 N.C. 207, 212 (2019). "The determinative factors must be the best interests of the child and the fitness of the parent to care for the child at the time of the termination proceeding." *In re Ballard*, 311 N.C. 708, 715 (1984) (emphasis omitted).

¶ 10 Here, the trial court found past neglect and determined that there was "a high likelihood of a repetition of this neglect" if Vincent and Ava were returned to respondent's care. Respondent does not contest the finding of past neglect but limits her challenge to the determination that there was a likelihood of future neglect, specifically arguing that "the [trial] court failed to properly address whether or not [Ms.] Bunch (and other family members) . . . could assist [respondent] in preventing future neglect." In making this argument, respondent challenges a number of findings of fact as unsupported by the evidence. However, even if we were to find these findings unsupported, we are still bound by the remaining unchallenged findings of fact which are more than sufficient to support the trial court's determination that there was a likelihood of a repetition of neglect.

¶ 11 The unchallenged findings do not reveal any change in circumstances supporting the conclusion that Vincent and Ava would not be neglected in the future if returned to respondent's care. Instead, the

findings provide overwhelming support for the trial court's determination that there was a likelihood of a repetition of neglect, regardless of respondent's challenges to other findings involving the suitability of family members as caregivers. The relevant unchallenged findings are as follows:

> 38. The following facts, from the adjudication hearing, are binding on the parties, and consist of the reasons the juveniles were removed from the home.
>
> a. [Respondent] lacks adequate housing and has presented an identifiable pattern of unstable living for the last twelve months, which has created an unsafe living environment for her juveniles.
>
> b. [Respondent]'s frequent changes in and different living arrangements have not resulted in a better placement due either to unsafe neighborhoods, a failure to have basic accommodations such as heat or air conditioning in a mobile home, and/or a failure to have an appropriate number of bedrooms, including one home with no beds and all household members sleeping in one room on the floor.
>
> c. [Respondent]'s homes have been filthy, including her home at the time of the filing of the underlying petition, which was found to have maggots under the carpet resulting from a failure to dispose of garbage.
>
> d. The juveniles' personal hygiene when in the care of [respondent] over the past [twelve] months was poor.
>
> e. The juveniles have been directly exposed to domestic violence that involved [respondent]'s live-in boyfriend cursing at her, pushing her, spitting in her face, breaking furniture in anger, and on one occasion threatening that "everyone got to die one day[."]
>
> f. The juveniles have been exposed to pornography in [respondent]'s home . . . .

> g. Based upon the Comprehensive Psychological Evaluation by Evans Health on [3 May 2017], [respondent] has a history of developmental disability that negatively impacts the welfare of the juveniles. [Respondent] does not understand many of the decisions and [judgments] in everyday functioning and child rearing. She needs guidance and support not only to parent her juveniles, but also for herself to function independently.

39. The problems in [respondent]'s home for the juveniles consisted of the juveniles having poor hygiene, being exposed to domestic violence, and being exposed to pornography. Due to [respondent]'s cognitive delays, the juveniles' basic needs were not met.

. . . .

48. [Respondent] has completed a psychological/parenting capacity evaluation with Dr. Kristy Matala. The evaluation determined that [respondent] is not capable of parenting these juveniles.

. . . .

51. [Respondent] has extensive and significant cognitive limitations, which impair her ability to address problem-solving situations.

52. [Respondent]'s cognitive limitations interfere with her ability to independently parent her juveniles, and she would require significant supervision and assistance in order to parent.

53. [Respondent] has difficulty making sound decisions for herself or her children. This fact from her evaluation was echoed, during their testimony, by both Ms. Bunch and Ms. Spivey, [with] which this [c]ourt concurs.

. . . .

57. [Respondent] was administered a personality assessment inventory (PAI) which is an

objective test measuring personality patterns and clinical syndromes.

58. [Respondent]'s PAI was determined to be invalid as she responded to items inconsistently or did not attend to items appropriately. There are several potential reasons for this response pattern, including carelessness, confusion, or failure to follow test instructions.

59. Dr. Matala believed that [respondent]'s comprehension is so low that she could not understand the PAI test questions, and this Court shares the same concerns.

60. [Respondent] was also administered a brief symptom inventory (BSI) designed to assess her for psychological symptoms that have been present during the past week.

61. During the BSI, [respondent] endorsed experiencing significant psychological turmoil and a variety of physical health complaints. She reported experiencing thoughts and impulses as unwanted and unrelenting. She seems to have unusual ideas.

62. [Respondent]'s test results were consistent with the long-standing concerns documented in the records about her ability to properly parent these juveniles. In real world application, [respondent] has been unable to provide proper care to these juveniles.

63. When interviewed as part of her parenting capacity/psychological evaluation, it was clear that [respondent] had difficulty understanding even simple questions and her responses were not always logical. Her insight and judgment appeared to be poor. [Respondent]'s presentation is consistent with the prior court record and her testimony at this hearing.

64. At the time of her parenting capacity/psychological evaluation, [respondent] complained of being hungry; however, she admittedly did not have any money with her. [Respondent] needs assistance with these type[s] of basic daily living situations. Both of [respondent]'s own witnesses (Ms. Bunch and Ms.

Spivey), indicated that she had difficulty budgeting and needed to be told . . . when to pay her bills.

65. [Respondent] has difficulty understanding basic information. She does not appear to understand her juveniles' diagnoses or their special needs.

66. [Respondent] has no insight into why these juveniles are in the custody of [DSS]. Based upon her lack of insight, it is not likely that she can prevent the situations that previously occurred from repeating, as she lacks the ability to understand what was wrong in the first place.

. . . .

68. [Respondent] continues to reside with Mr. Woodley despite the concerns that have been expressed regarding his suitability to be around these juveniles. Knowing these concerns, [respondent] married him.

69. [Respondent] is aware that there are allegations that Mr. Woodley inappropriately touched her juveniles, but she denies the allegations.

. . . .

81. The services that [respondent] ha[s] received from Positive Generation in Christ have not resulted in her developing insight into the current situation or the reasons that her juveniles were removed from her care.

. . . .

83. Since the [p]etition was filed, [respondent]'s circumstances are such that it is likely that the juveniles would be exposed to the same harmful environment if . . . the juveniles were returned to her residence.

. . . .

86. [Respondent] is not able to care for these juveniles. If returned to her home, the juveniles would be neglected; repetition of the prior neglect is foreseeable.

. . . .

> 89. [Respondent] does not know [or] even comprehend basic measures necessary to ensure the juveniles' safety.

These unchallenged findings of fact are binding on appeal and more than sufficient to support the trial court's determination that there was a likelihood of a repetition of neglect.

¶ 12 Certainly, there may be situations where a parent's reliance in part on others to assist her in caring for her children supports a determination that there is not a likelihood of a repetition of neglect if the children are returned to her care. Nonetheless, the "determinative factors" in assessing the likelihood of a repetition of neglect are "the best interests of the child and *the fitness of the parent* to care for the child at the time of the termination proceeding." *In re Z.G.J.*, 378 N.C. 500, 2021-NCSC-102, ¶ 26 (emphasis added) (quoting *In re Ballard*, 311 N.C. at 715 (emphasis omitted)). Even if a parent relies on others for assistance in caring for her children, the trial court must assess the fitness of the parent herself, not others, since the parent retains ultimate authority over the child. *See Adams v. Tessener*, 354 N.C. 57, 60 (2001) (recognizing a parent's "fundamental right to make decisions concerning the care, custody, and control of his or her children" (cleaned up)). Accordingly, a parent must be able to understand the past neglect her children suffered while in her care; comprehend how to keep them safe from harm through proper care, supervision, discipline, and provision of a living environment not injurious to their welfare; and demonstrate an ability to do so. *See* N.C.G.S. § 7B-101(15). The binding findings of fact in this case reveal that respondent lacked this ability at the time of the termination-of-parental-rights hearing. Therefore, we affirm the trial court's adjudication that a ground existed to terminate respondent's parental rights.

¶ 13 Having affirmed the termination of parental rights on the ground of neglect adjudicated by the trial court, we need not address the remaining ground of dependency. *See In re M.A.*, 374 N.C. 865, 875 (2020). Similarly, while respondent preserved objections to some of the trial court's evidentiary rulings at the termination-of-parental-rights hearing, these objections were only relevant to the findings of fact respondent challenged. Since we found that the unchallenged findings were sufficient to support the trial court's finding of past neglect, its determination that a likelihood of a repetition of neglect exists, and its conclusion that a ground existed to terminate respondent's parental rights, there was

no prejudice in the exclusion of the testimony at issue even if in error. Thus, we need not address in further detail respondent's evidentiary arguments. Finally, because we allowed review of this case on the merits through a petition for writ of certiorari, this case is properly before us. *See* N.C.G.S. § 7A-32(b) (2021); N.C. R. App. P. 21(a)(1). Accordingly, we need not address whether respondent's notice of appeal was defective to resolve this appeal.

III. Conclusion

¶ 14 The trial court did not err when it adjudicated that the ground of neglect existed to terminate respondent's parental rights pursuant to N.C.G.S. § 7B-1111(a)(1), and respondent does not challenge the trial court's best interests determination. Accordingly, we affirm the order terminating respondent's parental rights.

AFFIRMED.

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